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Chapter IP 3
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Chapter IP-5 Immigrant Applications in Canada made on Humanitarian or Compassionate (H & C) Grounds.
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IMMIGRATION

Canada

Chapter IP 1
Processing Undertakings in Canada





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Processing Undertakings in Canada

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes the processing of undertakings submitted in Canada by Canadian citizens and permanent residents on behalf of their family class relatives abroad.

1.2 Policy Intent

In requiring undertakings in Canada on behalf of family class relatives abroad, Canada's policy is to further the following objectives:

- to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad;
- to ensure sponsors are able to support their relatives and honour their sponsorship obligations.

1.3 Who can be sponsored

Only members of the family class may be sponsored. This immigrant category is limited to:

- the sponsor's spouse – To qualify as a "spouse", the applicant must be a member of the opposite sex to whom the sponsor is joined in marriage. "Marriage" according to the Immigration regulations means "the matrimony recognized as a marriage by the laws of the country in which it took place, but does not include any matrimony whereby one party to that matrimony became at any given time the spouse of more than one living person".
- the sponsor's dependent son or dependent daughter – To qualify as a "dependent son or daughter", the child must be:
  - under age 19 and unmarried when he/she applies for the visa, when the visa is issued and at landing, or
  - determined by a medical officer to be suffering from a physical or mental disability, is unable to support himself/herself and is supported mainly by his/her parents, or
  - a full–time student who is studying at a college, university or other educational institution continuously since the age of 19 (or, if married before the age of 19, the time of marriage), and has been supported mainly by his/her parents since the age of 19. Students may interrupt their studies for a period of 12 months, but must be studying when they apply for their visa and when the visa is issued.
- the sponsor's mother or father – to qualify as a "mother or father", the person must be the natural or adoptive parent. Once a child has been adopted, his/her natural parents are no longer sponsorable. In cases where a sponsor who was landed under immigrant category is FC9 is attempting to sponsor a parent, the sponsor should be contacted to determine if the proposed immigrant is the natural parent.
- the sponsor's grandmother or grandfather – to qualify as a "grandmother or grandfather", the person must be the parent of the mother or father of the sponsor.
- the sponsor's brother, sister, nephew, niece, grandson or granddaughter, who is an **orphan** and is under 19 years of age and unmarried. An orphan is a person whose mother and father are both deceased.

- the sponsor's fiancee
- any child under 19 whom the sponsor intends to adopt and who is:
  - an orphan,
  - an abandoned child whose parents cannot be identified,
  - a child born outside of marriage who has been placed with a child welfare authority for adoption,
  - a child whose parents are separated and who has been placed with a child welfare authority for adoption, **or**
  - a child one of whose parents is deceased and who has been placed with a child welfare authority for adoption.
- **if the sponsor does not have a spouse, son, daughter, father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew or niece who is a Canadian citizen or a permanent resident, or a relative listed above who may be sponsored,** one relative regardless of age or relationship (anyone connected by blood). If the chosen relative proves to be inadmissible, the sponsor may choose another. The sponsor will have to provide evidence that he/she does not have any relatives listed who are Canadian citizens or permanent residents and no relatives in the family class that can otherwise be sponsored. The sponsor should provide evidence regarding his marital status; provide the name, address, age, marital status, country of citizenship and permanent residence, as well as previous residences in Canada of any relative named above. The sponsor should submit information regarding his/her relatives with the undertaking (see APPENDIX A).

2. THE UNDERTAKING

2.1 What is an undertaking

For the purpose of sponsoring a member of the family class, an undertaking or agreement is given to the Minister to provide for the lodging, care and support of a member of the family class and the member's dependants for a period not exceeding ten years, as determined by an immigration officer.

The undertaking (IMM 1344) includes three areas the sponsor must complete:

Part A – biographical data of the sponsor.

Part B – family members being sponsored and dependants. If the sponsor's family members are ethnically chinese, names and addresses must be provided in Chinese characters. If the sponsor's family members are Iranian, Farsi script for all names and addresses must be provided.

Part C – a declaration that the sponsor will provide adequate lodging, care and maintenance for those being sponsored. Part C also includes a declaration to be made when a client sponsors a fiance. This declaration states the sponsor will marry the fiance within 90 days of the fiance's landing.

2.2 How clients submit an undertaking

A "Sponsoring a Family Class Relative" kit is obtained by the client by either contacting a telecentre or Canada Immigration Centre which is opened to the public. The kit contains a guide which provides the client with information to determine if he/she is eligible to sponsor, if his/her relative is included in the family class and steps in processing.

The kit contains 2 copies of the Undertaking (IMM 1344) and the financial evaluation (IMM 1283) and a form outlining the fees for Immigration services.

Once the client has read the guide and completed the forms, the undertaking, fee and all necessary documents are sent to the Case Processing Centre (CPC) responsible for the processing of undertakings of assistance.

2.3 Screening the undertaking for completeness

Undertakings and supporting documentation must be reviewed to verify that:

- the correct cost recovery fee is included;
- the correct Right of Landing fee or evidence of an approved loan has been included;
- the undertaking has been completed and signed;
- evidence that the sponsor is a Canadian citizen or permanent resident of Canada has been provided (birth certificate, Citizenship card, passport, record of landing). FOSS can also be used to verify permanent residence. A Citizenship Commemoration Certificate is NOT to be accepted as proof of citizenship;

- a copy of the sponsor's divorce judgement or death certificate for spouse has been provided if he/she was previously married and is now sponsoring a fiance or spouse;
- the sponsor meets eligibility criteria (see section 3. below);
- the sponsor has not defaulted on a previous undertaking (see section 4.2 below);
- persons listed on the IMM 1344 fall under the same Immigrant category (a spouse and mother, for example, should not be included on the same IMM 1344).

2.4 What to do if the undertaking is incomplete

If any documents are missing or the undertaking is incomplete or unsigned, return the kit and fees to the client with a letter of explanation. If the cost recovery fee or Right of Landing fee has not been submitted or is insufficient, return the kit to the client with a letter of explanation.

2.5 Tracking of the undertaking

The CPC computer based information system tracks processing of undertakings. Officers enter basic data information including the names of the individuals being sponsored, financial information and the decision regarding the undertaking.

Information in the CPC system is fed into the Field Operations Support System (FOSS) which tracks processing of undertakings through the Case Processing Support (CPS) module. When an undertaking has been approved, information regarding the sponsor, principal applicant, related dependents (enter the dependent's relationship to the **sponsor**), date forwarded overseas and post abroad is entered in FOSS.

3. ELIGIBILITY OF THE SPONSOR

3.1 Determining eligibility of the sponsor

A person is eligible to submit an undertaking if he/she meets the criteria in the definition of "sponsor" as outlined in R2 as follows:

- must be a Canadian citizen or permanent resident,
- must be at least 19 years of age, and
- must be residing in Canada.

Foreign stamps or post marks on the envelope, a foreign employer or the sponsor's non–Canadian address are indications the sponsor may not be residing in Canada.

3.2 Submission of undertaking of assistance (IMM 1344) abroad

Visa officers may accept undertakings from persons who are outside of Canada for a short temporary purpose, or who have resided abroad for a long period of time provided the prospective sponsor is a Canadian citizen. Undertakings should only be accepted abroad in support of an application for permanent residence made by a spouse or dependent child. In these cases, visa officers are encouraged to interpret the phrase "residing in Canada" in a flexible manner. This flexible interpretation applies to Canadian citizen sponsors only since prospective permanent resident sponsors living abroad must satisfy the port of entry officer as to their own status as residents of Canada. Permanent residents should be counselled that they must resume residence in Canada before their dependent's application can be considered.

When visa officers accept an undertaking abroad, a copy must be sent to the Case Processing Centre in Canada.

In cases where the visa officer is not satisfied that a Canadian citizen is a resident of Canada, but is satisfied concerning the bona fides of the application, the application should be processed to the point of issuance and the prospective sponsor counselled to submit an undertaking when he or she returns permanently to Canada. The sponsor should be advised to include a letter with the undertaking advising that an application is being processed abroad.

The CPC will telex details of the undertaking to the visa office as soon as it is submitted so the visa can be issued without delay.

3.3 What to do if the sponsor is ineligible

If the sponsor is ineligible **or** is attempting to sponsor an individual who is **clearly not a member of the family class,** (including a common law spouse, same sex partner or natural parent of an adopted child) the kit and fee must be returned to the client with a letter of explanation. In these cases, no correspondence will be sent to the visa office.

Common law spouses or same sex partners do not meet the R2 definition of "spouse". Should a client submit an undertaking in support of an application for permanent residence in these cases, the kit and fee should be

returned to the client with a letter of explanation. In the case of a common law spouse, the option of sponsoring as a fiance should be explained in the letter. A person attempting to sponsor a same sex partner should be advised that where compassionate or humanitarian considerations exist, the partner should submit an independent application directly to the appropriate visa office.

In cases where the sponsor is ineligible, the letter of explanation should advise the client that if he/she insists on submitting the Undertaking of Assistance, to return the package with the enclosed letter of explanation and a note advising of his/her intention to continue. The undertaking will then be sent abroad with a notation advising the visa officer that the proposed immigrant is not a member of the family class.

4. QUALIFICATION OF THE SPONSOR

4.1 Who qualifies to submit an undertaking

In addition to being eligible, the sponsor must also qualify to submit an undertaking. In order to qualify, the sponsor must:

- not be in default on any previous undertaking, and
- meet financial requirements.

4.2 Determining Default

When an officer at a Canada Immigration Centre receives information from a social assistance agency that a sponsor is not supporting a relative, the officer will determine if the length of undertaking has expired. If not, the officer will enter in the CPS system that the sponsor has defaulted. If the sponsorship is not in the CPS system, a NCB should be entered in FOSS (watch–for) to alert officers at the CPC that a sponsor has defaulted. A letter should be sent to the sponsor reminding of his/her obligations and to advise that he/she is not eligible to sponsor in the future.

The Field Operations Support System (FOSS) and box 21 on IMM 1344 must be checked to determine if the sponsor is in default of any undertaking.

Although default is not defined in the legislation, it is generally accepted that a sponsor would be in default in the following circumstances:

- where the sponsor fails to provide lodging for persons listed on an undertaking during the length of undertaking;
- where payments as outlined in schedule VI have been made directly or indirectly to the persons listed on an undertaking during the length of undertaking.

Although there is no need to interview a sponsor who has defaulted to determine the reasons for the default, (since a visa officer is not able to issue an immigrant visa in these cases [R6(1)(b)(ii)]) if there is no evidence on FOSS that a previous default exists, but box 21 on IMM 1344 has been ticked, the CPC should refer the case to the responsible CIC to determine if, in fact, the sponsor is in default.

> ***Note:*** *Quebec cases: All cases of default, whether indicated on FOSS or on the IMM 1344 should be referred to the CIC.*

4.3 Determining financial requirements

The sponsor must be able to fulfil the responsibilities of the undertaking by meeting settlement arrangements. The low income cut–off figures (LICO) and the IMM 1283 are used to determine this. The LICO figures are published yearly by Statistics Canada (see IR 2 – Low Income Cut–off of Family Units (effective April 1, 1994).

With the exception of the circumstances outlined in 4.4 below, settlement arrangements are to be met for the total of:

- the sponsor
- his/her spouse

- the sponsor's dependent children
- previously sponsored relatives who are still dependent on the sponsor
- any other relatives dependent on the sponsor or spouse for support
- relatives the sponsor is submitting the undertaking for, and
- other dependent children of the principal applicant who are not accompanying the applicant to Canada.

The officer at the CPC must calculate the total income available from the information supplied by the client. If the client or spouse is self–employed or is receiving income from rental properties, the net figure as opposed to the gross figure should be considered and must be supported by a financial statement prepared by an accountant or a notice of assessment. Overtime may be considered if a letter from the employer indicates it is of a constant duration or this income is supported by a T4. Tips are to be considered only when reported on the income tax return and supported by the notice of assessment. All income from Worker's Compensation (with the exception of payments for permanent disabilities), social assistance agencies, employment training programs and unemployment insurance are not to be considered.

The amount of sponsor's yearly debt payment that exceeds $1,080.00 must be subtracted from his/her total income to arrive at the income available which must then be compared to the LICO figures. First mortgages are not to be considered as a debt and therefore should not be subtracted.

In cases where the LICO is not met, but the available income is close to the required amount, other factors can be considered prior to making a final decision.

Factors to consider may be:

a) the stability of the sponsor's employment, and

b) the clear title ownership of a house.

An officer may approve a sponsorship where he/she is satisfied that the sponsor will be able to fulfil the undertaking.

When the officer has formed an opinion regarding settlement arrangements, the "For office use only" area on the IMM 1283 and the 1344 should be completed.

4.4 Where financial requirements need not be determined (see IR 2 – When Do Settlement Arrangements Apply?)

An immigration officer is not required to form an opinion regarding settlement arrangements:

a) in cases where the person being sponsored intends to reside in Quebec, or

b) in respect of a person who is:

   i) the spouse of the sponsor and does not have any accompanying dependants who have children;

   ii) an accompanying dependant of the spouse of the sponsor and, at the time the sponsor submitted the undertaking, was under 19 years of age and has no children; or

iii) a dependent son or daughter of the sponsor and, at the time the sponsor gave the undertaking, was under 19 years of age and has no children.

4.5 Co–sponsorships

The person who signs the undertaking as the sponsor is the only one legally responsible for it. However, the resources of a co–sponsor can be taken into consideration if he/she is eligible to sponsor the person in his/her own right.

Therefore, siblings in Canada can pool their resources to sponsor parents or grandparents. Co–sponsors should photocopy and complete the financial evaluation form (IMM1283) and submit it with the sponsors. They should also provide a letter to the CPC advising of their intention to co–sponsor.

4.6 What to do if the sponsor does not qualify

If the sponsor is eligible but does not qualify per section 4.1 above, the undertaking and fee should be returned to the client with a letter of explanation. The letter should provide counselling to the client and stress that should the undertaking be sent overseas, it is unlikely that immigrant visas would be issued. If the client resubmits the undertaking, it must be sent to the appropriate visa office. The 1344 should be clearly marked that either settlement arrangements are not met or the sponsor is in default.

A letter should be sent to the sponsor advising that it is the opinion of the immigration officer that he/she does not qualify, but the undertaking has been forwarded to the visa office. The decision to refuse an application for permanent residence rests with the visa officer. The right of appeal by the sponsor does not occur until the permanent resident application has been refused.

5. THE FEES

5.1 Cost Recovery

A fee must be paid for the processing of each application at the time the sponsorship if submitted. Officers should assume that in cases where an applicant resides in a refugee camp, that he/she will eventually be determined to be a CR/DC member and should make no effort to collect fees. If it is later determined that they do not fall into the CR/DC category, normal fees will apply.

5.2 Right of Landing Fee

A Right of Landing Fee which is a fee for receiving the privilege of permanent residence in Canada, is applicable to any person who is at least 19 years of age and who applies for permanent residence. This fee is to be paid when the undertaking is submitted. In cases where an applicant or sponsor does not have the funds to pay, he/she may apply for a loan. Loan application kits are available at all telecentres, Canada Immigration Centres and Info Centres which are open to the public. Loans are approved only for the full amount of the Right of Landing Fee and are granted on the basis of both demonstrated need and demonstrated ability to repay.

All applications received without the Right of Landing fee, evidence of an approved loan or evidence that the fee has been paid abroad included will be returned to the sponsor with a letter of explanation.

Refunds of this fee will be granted in all cases where the applicant has not been granted landing. Refunds in sponsorship cases, where there are appeal rights, will be to the sponsor "on demand", after a negative appeal decision. Before refunding, the visa office should be contacted to ensure a visa has not been issued.

5.3 Forms of payment

Postal or money orders, traveller's cheques, certified cheques and Visa and Mastercard are acceptable forms of payment. Certified cheques, money orders and traveller's cheques are to be made payable to the Receiver General for Canada.

6. POSITIVE DECISIONS

6.1 Completion of forms

Once the sponsor has been determined to be eligible and qualified to submit a sponsorship, the case should be entered into the CPC system/FOSS as outlined in section 2.5 above and the "official use only" area on the IMM 1344 and 1283 should be completed. The "settlement arrangements met for" box must be completed with the highest possible number of people from abroad the sponsor is eligible to sponsor. This will alleviate the need for visa offices to contact the CPC should additional dependants be discovered after receipt of the undertaking at the visa office.

Example:

Total income available (IMM 1283, box 10) $38,000.00

Total number of persons the sponsor is currently responsible for* 3

Number of family members currently being sponsored 1

LICO for 4 persons $30,655.00

LICO for 6 persons $36,356.00

* including self

"3" should be entered in the "settlement arrangements met for" area on the IMM 1344.

When complete, the undertaking and documents should be sent to the appropriate visa office and a letter sent to the client advising of the decision.

6.2 Special Information for the Visa Office

There are cases where additional information should be sent to the visa office. This additional information is:

- In cases where the sponsor was a refugee who was issued a visa overseas, a photocopy of the IMM 1000 should be provided to the visa office to facilitate locating information from the original file;
- In cases where the sponsor does not meet settlement arrangements but is sponsoring a spouse and/or dependent children, copies of the financial information should be provided with the IMM 1344 to substantiate an A19(1)(b) refusal where appropriate;
- In cases where the sponsor was previously adopted, is subject to terms and conditions or the subject of a A27(1) report, a memorandum explaining the situation should be sent to the visa office.

6.3 Length of undertaking

The length of undertakings submitted on behalf of members of the family class may vary from one to ten years. In establishing a period of validity, the primary consideration is the length of time that it will take the prospective immigrant to become established.

In the case of minor children or aged parents who can be expected to be dependent upon the sponsor for a lengthy period of time, the maximum of ten years should be imposed. For relatives who do not have dependents and may not require support for a lengthy period of time, or for whom employment has been arranged, a much shorter period of one to two years is appropriate.

7. REFERRAL OF CASES TO CANADA IMMIGRATION CENTRE

It will be necessary to refer some cases from the CPC to a CIC to be finalized. The referral criteria are:

- any potential refusal based on a suspected violation of the Immigration Act which could lead to a A27(1) report and enforcement action against the sponsor. This would include cases where criminal charges are pending against the sponsor;
- any case of suspected fraud on eligibility criteria or suspected fraud regarding employment letters or settlement arrangements;
- cases where the visa office has requested an interview with a sponsor in order to clarify the bona fides of relationship;
- cases identified for quality assurance monitoring;
- any case where an officer at the CPC is of the opinion that a personal interview would be necessary to properly assess the merits of a particular case.

Where criminal charges are pending against the sponsor or the sponsor is the subject of a A27(1) report, the officer at the CIC will review the file and compose a memo to the visa office to advise of the allegations and the disposition of the report/charges. If possible, advise the visa office of the anticipated date of the final disposition of the report. A copy of the memo must accompany the IMM 1344 when sent to the visa office. When a decision regarding the disposition of a A27(1) report is known, the visa office should be advised. Apart from this, the IMM 1344 will be processed in the normal manner.

8. PROCESSING ABROAD

8.1 Applications for permanent residence

Upon receipt of the undertaking, applications for permanent residence will be sent to the sponsored persons listed except dependent children under 18. They will be included on their parent's application. If the parent is sponsoring a child under 18, the child will be sent an application to complete.

The visa office will provide medical instructions and arrange for background checks. When all outstanding requirements are met, the visa officer will make a decision on the application, and if approved, will issue immigrant visas.

8.2 Refused applications for permanent residence

Immigrant applications for members of the family class may be refused by a visa office for reasons such as:

a) the applicant or any of his dependants are inadmissible, or

b) the sponsor does not meet the requirements of the Regulations.

When an application for permanent residence of a member of the family class is refused, the visa officer will advise the applicant in writing. A copy of the refusal letter is to be sent to the Canada Immigration Centre/CPC that processed the undertaking.

The CIC/CPC will:

- advise the sponsor of the reason for the refusal by providing a copy of the overseas refusal letter;
- provide the sponsor with a Notice of Appeal and a letter explaining the process (APPENDIX B);
- enter in FOSS as an NCB (general code––12 for six month duration) the following notation:

Letter of refusal re: file #_____ rec'd from _____ (Visa office). Notification, appeal forms and copy of refusal letter mailed to sponsor. (date and officers initials)

The completed notice of appeal is sent directly to the appropriate appeals office by the sponsor. Staff at the appeals office are then responsible for requesting files from the overseas office.

9. ADOPTIONS

Sponsors may submit an undertaking in support of an application for permanent residence made by:

- a dependent son or daughter whose adoption was finalized before having attained the age of 19, or
- a child under 19 the sponsor intends to adopt and who is:
  - an orphan,
  - an abandoned child whose parents cannot be identified,
  - a child born outside of marriage who has been placed with a child welfare authority for adoption,
  - a child whose parents are separated and who has been placed with a child welfare authority for adoption, **or**
  - a child one of whose parents is deceased and who has been placed with a child welfare authority for adoption.

In either case, the province in which the child is to reside must state in writing that it has no objection to the proposed arrangements for the reception and care of the child [R6(1)(c)]. This is commonly called a "no objection letter". Some provinces may issue a letter of "no involvement". This letter is also acceptable for the purposes of R6(1)(c).

The provincial authority may require a sponsor to undergo a home study prior to issuing the letter of no objection. As procedures differ from province to province, prospective sponsors should be given the brochure entitled "International Adoption and the Immigration Process" which provides information regarding the responsible authority in each province. This information has been included as APPENDIX C in this chapter.

Undertakings received at the CPC which do not include a letter of no objection/involvement, will be processed and sent overseas. The officer at the CPC will simultaneously request the letter of no–objection/involvement from the respective provincial authority as outlined in APPENDIX C. The provincial authorities are requested to send the letter to the appropriate visa office. Should the letter be sent to the CPC, it should be forwarded to the visa office immediately.

For Quebec cases, a copy of the IMM 1344 and any supporting documentation is sent to the Quebec provincial authorities (MAIICC).

9.1 Unnamed Adoptions

Where an undertaking is submitted in support of an application of a child to be adopted abroad where the name of the child is not known, the case will be processed in the normal manner except where the sponsor resides in Quebec. The letter of no objection/involvement will be requested from the applicable provincial authority as outlined above. This letter will also advise the authority that the child is unnamed.

A letter will be sent to the sponsor advising them to contact the provincial authority when full particulars of the child are known.

For Quebec cases, the original IMM 1344 and necessary supporting documentation is forwarded by mail to MAIICC for completion of the undertaking. The child's name, once known, will be placed on the

IMM 1344 by MAIICC. When the undertaking is complete, the MAIICC will then forward the original IMM 1344 directly to the visa post. Therefore, when the undertaking is sent to the MAIICC, a letter should also be sent to the sponsor advising him/her to contact MAIICC once their child's name is known.

10. REVISIONS TO UNDERTAKINGS AFTER SUBMISSION

10.1 Withdrawal of undertaking

Even though the majority of sponsorships are processed at the Case Processing Centre in Mississauga, there may be instances where a sponsor contacts a Canada Immigration Centre when wishing to withdraw an undertaking of assistance. The procedure below is to be followed:

- if the sponsor calls a telecentre, he/she should be advised to contact the CPC to withdraw the undertaking;
- if the sponsor walks in to a CIC, the CIC should accept the withdrawal (after checking FOSS to determine the applicant has not been landed and verifying the sponsor's identity) and fax it to the CPC who will process the withdrawal as outlined below;
- check FOSS to determine whether the applicant has been landed, and if not landed:
- to be sure that the person wishing to withdraw is indeed the sponsor, the client should be asked for his/her client ID number (if withdrawal is by mail, attempt to contact the sponsor by phone), or the signature compared on the withdrawal to that of the IMM 1344 if available;
- the CPC will send an URGENT fax or electronic mail message to the appropriate visa office immediately which contains the following information:

  "Re: (Prospective Immigrant's surname), first and middle names, D.O.B., being sponsored by: (Sponsor's surname), first and middle names, D.O.B., has WITHDRAWN SPONSORSHIP through correspondence dated: (date)/or (not dated). Original correspondence forwarded to your office on this date. Please advise this office when processing of the application has ceased."

The name of the visa office can be obtained in the CPS system in FOSS.

- amend the CPS system to change "approved" to "withdrawn" and add the following remarks under the sponsor's "Y" number:

  "DATE: Sponsorship withdrawn through letter dated (date)/(no date, but received on (date)). (Name of Visa office) advised this date. (Office number/officer's initials)"
- prepare a memorandum to the visa office and attach the original correspondence from the sponsor;
- advise the sponsor of the action taken. No guarantee should be made that the applicant will not be issued an immigrant visa, as occasionally, the visa may have already been issued;
- upon confirmation from the visa office that processing has ceased, the Right of Landing fee should be refunded to the sponsor;
- if the visa office advises that the landing record has been issued, but the applicant has not been landed, enter an NCB in FOSS (code 01 for one year) to read:

  "IMM 1344 withdrawn by sponsor through correspondence dated (date). Subject issued IMM 1000. (name of visa office) advised this date. (Office number/officer's initials).

Note: If the withdrawal is received prior to the IMM 1344 being processed, the undertaking and fees should be returned to the client.

10.2 Additions and deletions of family members

Sponsors wishing to add family members to undertakings should complete an undertaking and forward it, the processing fee and Right of Landing fee, if required, to the CPC with a letter explaining a previous undertaking was submitted and that the undertaking relates to an additional family member. The officer at the CPC will process the addition as a new application but cross reference to the original IMM 1344 in WIP remarks as follows:

> "This is an addition to file # _____, (Principal applicant's surname), first and middle names, D.O.B. Addition forwarded to (visa office) this date. (Office number/officers initials)"

Follow the same procedures for deletion of family members from undertakings as outlined in section 10.1 above, except indicate in remarks the name, D.O.B. and FOSS ID# of person(s) being deleted and that remainder of the family is to continue to be processed for Permanent Residence.

11. UNDERTAKINGS FROM QUEBEC

The CPC's role in cases where the sponsor resides in Quebec is limited to confirming the eligibility of the sponsor as outlined in section 3.1 above.

The provincial government is responsible for assessing settlement arrangements in cases where the sponsor resides in Quebec. The officer at the CPC will forward a copy of the undertaking (IMM 1344) and the original financial evaluation form (IMM 1283) to the responsible office of the Ministère des Communautés Culturelles et de l'Immigration du Québec (MAIICC) and will simultaneously forward the original IMM 1344 to the appropriate visa office. A letter will be sent to the sponsor advising that the undertaking has been transferred to the MAIICC. The MAIICC will contact the client, complete the financial assessment and send copies of the Undertaking to the responsible visa office, to the designated Services d'Immigration du Québec office (SIQ) overseas, and will provide a file copy to the CPC.

12. REFERENCES

R2(1)	Definition of "member of the family class".
R4	Prescribes members of the family class as a class of immigrants for the purposes of subsection 6(1) of the Act.
R6(1)	Describes when a visa officer may issue an immigrant visa to the member of the family class and the member's accompanying dependants.
R6(2)	States that an immigration officer shall take into account Schedule IV when assessing settlement arrangements.
R6.(3)	Describes situations where an immigration officer is not required to form an opinion regarding settlement arrangements.
R6.(3.1)	States settlement arrangements need not be assessed in cases where the member of the family class intends to reside in Quebec.
R6(3.2)	States that a visa officer shall not issue an immigrant visa to a member of the family class destined to the province of Quebec unless the MAIICC is satisfied that settlement arrangements are met.
A77	Where sponsored applications for landing may be refused.

APPENDIX A

FAMILY INFORMATION SHEET

(see section 1.3)

(Side 1)

Both sides of this form are to be completed by the sponsor.

I do not have a spouse, son, daughter, father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew or niece who is a Canadian Citizen or permanent resident.

I also do not have a spouse, son, daughter, father, mother, grandfather, grandmother, brother, sister, niece or nephew that I can sponsor in the family class.

In order to provide evidence of the above I submit the following information:

My name is: _____

I wish to sponsor _____ who is my _____.
(name of proposed immigrant) (relationship to sponsor)

(If never married, do not complete the area below)

My spouse's name is: _____.

His/her date of birth is: _____

His/her address is: _____

_____

_____

Date of divorce (if applicable) _____

Date of death (if applicable) _____

My spouse's status in Canada is: _____ (if a Canadian Citizen or Permanent Resident)

(complete the reverse side of this form)

(Side 2)

Relationship	Name (family name, given name)	Date and Place of birth/death	Address	Status in Canada**
my son*				
my daughter*				
my father				
my mother				
grandfather (my father's father)				
grandmother (my father's mother)				
grandfather (my mother's father)				
grandmother (my mother's mother)				
my brother*				
my sister*				
my aunt*				
my uncle*				
my nephew*				
my niece*				

* if more than 1, list on a separate sheet.

** Indicate "C.C." if your relative is a Canadian Citizen.

Indicate "P.R." if your relative is or was ever a permanent resident of Canada.

APPENDIX B
SAMPLE REFUSAL LETTER
(see section 8.2)

This refers to your sponsorship and undertaking of assistance in support of the application for an immigrant visa submitted by _____.

I regret to inform you that the application has been refused by our visa office in _____ because _____ does not meet the requirements of the Immigration Act and the Immigration Regulations, 1978. I have attached a copy of the refusal letter sent to his/her attention which explains the reasons for the refusal.

Subsection 77(3) of the Immigration Act provides that a Canadian Citizen or a permanent resident who has sponsored an application for landing made by a member of the Family Class, may appeal to the Immigration Appeal Board on either or both of the following grounds, namely,

A) on any ground of appeal that involves a question of law or fact, or mixed law and fact; and

B) on the ground that there exists compassionate or humanitarian considerations that warrant the granting of special relief.

You may commence an appeal by completing the attached Notice of Appeal and serving it on an immigration officer by mailing it with a copy of this letter to:

Insert appropriate Appeal office Address

The completed form and a copy of this letter must be received within 30 days from the date of this letter. If you have any questions concerning the appeal process you may contact the nearest Canada Immigration Centre or Telecentre.

APPENDIX C
PROVINCIAL INFORMATION AND CONTACTS

(see section 9.)

Newfoundland

The province requires that a homestudy be completed before it will issue a letter of no–objection. The provincial contact is:

Director of Child Welfare
Department of Social Services
P.O. Box 8700
St. John's, Newfoundland
A1B 4J6
Tel.: (709) 729–3595
Fax: (709) 729–0583

Nova Scotia

The province requires that a homestudy be completed before it will issue a letter of no–objection. The provincial contact is:

Coordinator of Adoption Services
Family and Children's Services
Department of Community Services
Province of Nova Scotia
P.O. Box 696
Halifax, Nova Scotia
B3J 2T7
Tel.: (902) 424–3205
Fax: (902) 424–0708

Prince Edward Island

The Department of Health and Social Services conducts a standard home assessment and if the outcome is positive, the Director of Child Welfare from this department will issue a letter of no–objection. The provincial contact is:

Coordinator of Adoptions
Department of Health and Social Services
P.O. Box 2000
Charlottetown, PEI
C1A 7N8
Tel.: (902) 368–4932
Fax: (902) 368–4969

New Brunswick

The provincial Department of Health and Community Services provides home studies for all adoptions and will issue a letter of no–objection once this is complete. The provincial contact is:

Coordinator of Adoptions
Department of Health and Community Services
P.O. Box 5100
Fredericton, New Brunswick
E3B 5G8
Tel.: (506) 453–3830
Fax: (506) 444–4441

Quebec

In Quebec, the Secrétariat à l'adoption internationale (SAI) is the organization which represents the interests of provincial adoption authorities abroad. Before initiating immigration procedures, sponsors must have a homestudy completed. This may be done by a private social worker, or by a representative of the Ministry of Social Services, depending on the circumstances of the case.

Sponsors must then obtain a written statement from the SAI confirming that they have no objection to the proposed arrangements for the reception and care of the child. The sponsor must include this with the application; it will also be sent to the visa post abroad by the SAI. In cases where the child has not yet been identified, the SAI will issue a temporary no–objection letter. Once the child is identified and the adoption is complete, the SAI will issue a final no–objection letter.

In the case of Quebec applications, upon receipt of the forms the CPC will send a status letter to the sponsor to the effect that the application has been forwarded to the MAIICC. The MAIICC, in turn, will be sent a letter providing the sponsor's pertinent information, in order to review settlement arrangements. The MAIICC will then send all cases to the Services d'immigration du Québec (SIQ) overseas, as well as to the responsible visa office.

The provincial contact is:

Directeur
Secrétariat à l'adoption internationale
3700 rue Berri
Montréal, Province Québec
H2L 4G9
Tel.: (514) 873–9840
Fax: (514) 873–0762

Ontario

In the province of Ontario, the Ministry of Community and Social Services is the provincial authority which concerns itself with adoption cases. When an adoption is completed abroad, letters of no–involvement are generally issued without a home study. If an adoption is to be finalized in Ontario, a no–objection letter will be issued by the Ministry on the request of the CPC, once a homestudy is completed. The provincial contact is:

Adoption and Operational Services
Ministry of Community and Social Services
Management Support Branch
2 Bloor Street West
24th Floor
Toronto, Ontario
M7A 1E9
Tel.: (416) 327–4730
Fax: (416) 327–0573

Manitoba

The province of Manitoba will issue a letter of no–objection for named children. For unnamed children, the CPC will proceed with the processing of the Undertaking but will contact the overseas visa office requesting that they advise when a child has been identified so that a letter of no–objection may be provided by Child and Family Services. Once the child has been named and the letter is obtained, processing will proceed.

The provincial contact is:

Provincial Coordinator
Adoption and Peri–Natal
2nd Floor
114 Garry Street
Winnipeg, Manitoba
R3C 1G1
Tel.: (204) 945–6962
Fax: (204) 945–6717

Saskatchewan

A no–objection letter will be issued by the province on the request of the CPC. The provincial contact is:

Adoption Coordinator
Adoption Services
Saskatchewan Social Services
1920 Broad Street
Regina, Saskatchewan
S4P 3V6
Tel.: (306) 787–3610
Fax: (306) 787–0925

Alberta

A letter of non–involvement will be issued by the province at the request of the CPC. The provincial contact is:

Program Supervisor
Adoption Services
Alberta Social Services
9th Floor
Seven Street Plaza
10030–107 Street
Edmonton, Alberta
T5J 3E4
Tel.: (403) 422–0178
Fax: (403) 427–2048

British Columbia

Applications for international adoption will be processed through one of two procedures:

- adoptions completed outside Canada:
  - applicants have a homestudy completed,
  - applicants submit their Undertakings to the CPC,
  - the CPC requests that the Adoption Section of the Ministry provide a letter of no–objection,
  - family is contacted by Adoption Section and asked to submit the homestudy to:

    Ministry of Social Services
    Family and Children's Services
    Adoption Section
    Parliament Buildings
    Victoria, B.C.
    V8W 3A2

  - on receipt of the homestudy, if it is approved, the Ministry issues the required letter.
- adoptions completed in British Columbia:
  - applicants have a homestudy completed,
  - applicants apply to the CPC to sponsor a specific child to come to Canada for adoption here,
  - the CPC requests that the Adoption Section of the Ministry provide a letter of no–objection. The child's name and whereabouts must be stated.
  - on receipt of the request, the Adoption Section will:
  - request from a recognized social agency in the child's country of origin, information about the child, the child's background, and legal availability for adoption,
  - ask the family's local district office to determine the family's knowledge of the child's background, special needs and circumstances, confirm a private home study has been completed, and provide an impression about the suitability of the proposed placement.

– if this information is favourable, a letter will state that the Ministry has no objection to the child being admitted to Canada for adoption.

The provincial contact is:

Supervisor
Adoption Section
Ministry of Social Services
Parliament Buildings
Victoria, British Columbia
V8W 3A2
Tel.: (604) 387–7082
Fax: (604) 356–7862

Northwest Territories

A no–objection letter will be issued by the territory upon completion of a homestudy. The territorial contact is:

Coordinator
Child Protection and Adoption
Ministry of Social Services
Box 4
Precambrian Boulevard
500, 4920 52nd Street
Yellowknife, Northwest Territories
X1A 3T1
Tel.: (403) 873–7943
Fax: (403) 873–0317

Yukon

A no–objection letter will be issued by the territory upon completion of a homestudy by the Department of Health and Social Services, Family and Children's Services Branch. The territorial contact is:

Supervisor
Placement and Support Services
Department of Health and Social Services
Box 2703 (H–10)
Whitehorse, Yukon
Y1A 2C6
Tel.: (403) 667–3002
Fax: (403) 668–4613

Citizenship and Immigration

Canada

Chapter IP 2

Processing Applications to Sponsor Members of the Family Class



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1. INTRODUCTION

1.1 What this chapter is about?

This chapter explains how to process applications to sponsor family class immigrants.

Sponsorships are processed at CPC Mississauga (CPC-M), CPC Vegreville (CPC-V), and visa offices.

CPC-V staff process applications to sponsor members of the family class applying in Canada (see Chapter 5, section **6.6** of the IP manual). They assess these applications against all the requirements of section 5 of the *Immigration Regulations* (R 5.).

This chapter also explains how to record fiancé(e) terms and conditions, how to exchange information with provinces on sponsorship default and how to assign undertakings to provinces in case of default.

1.2 Policy Intent

Canada's policy is to allow its citizens and permanent residents to sponsor the immigration of their close relatives.

Family class immigrants need not satisfy the selection criteria used to assess other immigrants. Instead, sponsorship by a citizen or permanent resident ensures their successful establishment and integration.

Sponsors must be able and willing to support family class immigrants once they arrive in Canada.

Like all immigrants, members of the family class must be admissible to Canada.

1.3 Who can be sponsored?

Only members of the family class may be sponsored (see OP 2 *Processing Members of the Family Class*).

This family class includes the sponsor's:

- Spouse, excluding a spouse less than 16 years of age [R4(3.1)]
- Fiancé(e)
- Dependent son or dependent daughter (including an adopted son or daughter)
- Father or mother
- Grandfather or grandmother
- Orphaned, unmarried brother, sister, nephew, niece, grand-son or grand-daughter under 19 years of age
- Any child under 19 years of age whom the sponsor intends to adopt and who is any of the following:
  - An orphan
  - An abandoned child whose parents cannot be identified
  - A child born outside of marriage and who has been placed with a child welfare authority for adoption
  - A child whose parents are separated and who has been placed with a child welfare authority for adoption
  - A child, one of whose parents is deceased, and who has been placed with a child welfare authority for adoption

The family class may also include one relative connected by blood or adoption of any age, subject to one condition. Their sponsor must not have a spouse, son, daughter,

father, mother, grandfather, grandmother, brother sister, uncle, aunt, nephew or niece who is a Canadian citizen or permanent resident, or a relative listed above who may be sponsored.

Note: *Sponsors of a relative connected by blood or adoption of any age must submit information indicating they meet this condition, with the Undertaking to Assist Member of the Family Class- IMM 1344B (see* **APPENDIX A***).*

1.4 Which sponsorship regulations apply?

The existing sponsorship regulations came into effect on April 1, 1997. Sponsorship applications received until close of business April 18, 1997 can be processed under the pre-April 1, 1997 regulations. See *OM IP 97-12, OP 97-18, New Family Class Sponsorship Regulations* for transitional details and a comparison between old and new regulations.

1.5 Sponsorship requirements

Sponsorship requirements are in R5(1) to (7). Definitions for *undertaking, sponsor, gross Canadian income* and *payments made or due on account of financial obligations* are in R2(1). R6(1) to R6.1 explain conditions for visa issuance.

1.5.1 Residency requirements

Sponsors must be Canadian citizens or permanent residents, 19 years or older.

People registered as Indians under the *Indian Act* have the same rights and obligations under the *Immigration Act* as Canadian citizens, even if they are not citizens as well. Registered Indians may be sponsors.

Sponsors must be residing exclusively and without interruption in Canada or, if they are residing abroad, be Canadian citizens sponsoring their spouse or unmarried children under 19 without children of their own and returning to Canada to live.

Sponsorship by permanent residents who are subject to an A27(1) report will be held in abeyance until final disposition of the report.

Sponsorships by permanent residents charged with a serious offence will be held in abeyance until a final determination is made on the charges.

Permanent residents under a removal order cannot sponsor.

Permanent residents **and** Canadian citizens in prison cannot sponsor.

1.5.2 Financial requirements

Undischarged bankrupts cannot sponsor (see section **10.3** below).

Financial requirements, the Low-Income Cut-Offs (LICO) must be met for the 12-month period before the day the CPC receives the signed application (IMM 1344A), the undertaking (IMM 1344B) and the correct fees.

Financial resources are calculated by deducting financial obligations from gross financial resources.

Financial resources must originate from Canadian sources.

Financial resources may include the spouse's resources if the sponsor's financial resources are inadequate. The spouse must co-sign the undertaking.

Note: *Spouses who co-sign an undertaking are called "co-signers".*

The LICO figures for the family unit must be met through the sponsor's and/or co-signer's income only, i.e. other family members cannot pool their resources to help the sponsor meet the income test.

With one exception, ability to meet LICO is mandatory for sponsors of all applicants. Discretionary approval of financial requirements is not possible.

The only exception to the LICO requirement is for sponsors of spouses and minor children, and only if all their dependent children, whether accompanying or not, are less than 19, unmarried and have no children of their own. If any of these conditions is missing, the financial test applies.

The applicable LICO is based on the number of people in the sponsor's immediate family (sponsor, spouse and dependent children), the number of relatives under a valid undertaking previously given by the sponsor and co-signer, and the number of persons being sponsored, including non-accompanying dependants. The sponsor's place of residence determines the income level in the LICO chart.

1.5.3 The undertaking

All sponsors, except residents of Quebec, undertake ten year obligations sponsored immigrants. Sponsors in Quebec may be responsible for shorter or longer periods (see section **14.1.1**).

Sponsors (and co-signers) cannot be in default on any previous undertakings, transportation or ROLF loans.

Sponsors, co-signers and the sponsored relative must sign an agreement between them that confirms understanding of their mutual obligations and responsibilities.

1.5.4 Co-signers

Married and common-law spouses of the opposite sex can be co-signers; common-law relationships must have existed for one year.

Co-signers must be permanent residents or Canadian citizens at least 19 years of age and physically residing in Canada.

Co-signers cannot be bankrupt, in default of a previous undertaking, in prison, under a removal order, the subject of an A27(1) report, or charged with a serious criminal offence which could lead to their removal.

Co-signers must sign the undertaking and the sponsorship agreement to have their income considered.

Co-signers assume the same obligations as the sponsor for the care and support of the family class applicant and dependants. They also become jointly liable with the sponsor if there is a default on the undertaking.

2. PROCESSING SPONSORSHIPS

This section explains the role of immigration and visa officers in processing sponsorships.

2.1 Sponsorship kits

There are three sponsorships kits.

The sponsorship kit for relatives outside of Canada is entitled *Application to Sponsor: Family Class Relative*. Sponsors obtain it from a Call Centre or from a CIC open to the public. They mail completed forms and processing fee to CPC-M.

Sponsors of persons already in Canada use different kits. They are entitled *Spouses of Canadian Citizens or Permanent Residents* kit or *Humanitarian and Compassionate Cases*. These sponsors submit their forms and processing fee to the CPC-V.

CPC-M and CPC-V refer some sponsorship applications to CICs for investigation. After completing investigations, CICs must return the complete file to the CPC. Staff of the CPCs are responsible for entering the sponsorship application decision in the Case Processing Centre System (CPCS).

The sponsorship kits contain four forms.

2.1.1 Application to Sponsor a Member of the Family Class - IMM 1344A:

Sponsors list the sponsored relatives on the IMM 1344A.

A self-assessment questionnaire allows sponsors and co-signers to determine their eligibility to sponsor or co-sign. One part of the form is for persons sponsoring a fiancé(e). Another is for those sponsoring an adopted, or to be adopted child.

2.1.2 Financial Evaluation - IMM 1283:

The IMM 1283 helps the CPC determine sponsors have enough income to support their relatives.

All sponsors complete the IMM 1283 even if they need not meet an income test.

Sponsors of spouses and children must also sign an undertaking and a sponsorship agreement promising to support their families. The IMM 1283 helps immigration officers determine sponsors' ability to keep this promise.

2.1.3 Undertaking to Assist Member of the Family Class- IMM 1344B:

The undertaking is the sponsor's promise to support the family class immigrants. Co-signers sign the IMM 1344B if they wish their income to be taken into account.

2.1.4 Sponsorship Agreement - IMM 1344C:

Sponsors, co-signers (where applicable) and principal applicants at least 19 years old, or spouses and fiancé(e)s of any age, must sign the sponsorship agreement. It lists their mutual obligations.

2.2 Overseas sponsorships

Canadian citizens residing exclusively outside Canada may sponsor their spouse or minor children.

Visa offices should keep a small supply of the kit *Application to Sponsor: Family Class Relative* on hand for these sponsors. Sponsors abroad can also obtain the kit from a Call Centre in Canada. They need a Canadian address, since Call Centres do not mail kits abroad.

Sponsors abroad should keep in mind the kit addresses persons in Canada. Where the kit asks about Canadian income (IMM 1283), sponsors should list their foreign

income and financial obligations. This information is required in case of default. It may also help support a refusal under A19(1)(b) in some cases.

Overseas sponsors may submit their application to a visa office if their case is urgent. If it is not, sponsors should apply directly to CPC-M. The time-standard for CPC-M processing is 42 days.

> ***Note:*** *CPC-M will evaluate most requirements of R5(2), but visa officers must first establish sponsors reside exclusively outside Canada and that they will resume residence in Canada.*

Visa offices that process sponsorship applications may ask CPC-M to do a FOSS check. The sponsor may have sponsored before, or co-signed an undertaking. If the sponsor was a permanent resident, there may be an outstanding transportation loan. FOSS checks can also satisfy visa officers' concerns about the sponsor's or applicant's immigration history. It is not necessary to check FOSS for all overseas sponsors and applicants.

2.2.1 Forwarding original forms to CPC-M

Visa officers must immediately forward the original *IMM 1344A, Application to Sponsor, IMM 1344B, Undertaking, IMM 1283, Financial Evaluation and IMM 1344C, Sponsorship Agreement* to CPC-M.

CPC-M will record the undertaking in FOSS and file away sponsorship forms for use in case of default.

2.3 Initial determination at the CPC

CPC staff review sponsorship forms and supporting documents to verify that:

- The correct cost recovery fee is included.
- Forms are complete and signed.
- Persons listed on the *IMM 1344A* appear to be members of the family class.
- Persons on the *IMM 1344A* fall under the same sub-class of the family class, i.e. principal applicants and dependants only on the same *IMM 1344A*.

CPC staff determine the sponsor's eligibility to sponsor under R5(2). They also determine co-signers' eligibility to have their income considered. A checklist of the sponsorship and co-signer requirements is at **APPENDIX B**, *Eligibility Check*.

The application to sponsor is notated *Met* or *Not Met*. Reasons why applications are *Not Met* are inserted as Work in Progress events (WIP) in the CPCS (see **APPENDIX C**, *WIP Events*).

> ***Note:*** *Officers enter basic data information into CPCS, including the names of the sponsor, principal applicant, related dependents, post abroad, decision regarding the undertaking and date forwarded overseas. Information is downloaded to the Field Operations Support System (FOSS). FOSS tracks processing of undertakings through the Case Processing Support (CPS) module.*

2.3.1 LICO level

Statistics Canada publishes the LICO annually (Statistics Canada - catalogue 13-551-XPB).

The LICO are based on a detailed survey of family expenditure patterns conducted every four years by Statistics Canada. They are updated annually by the Consumer Price Index (annual average, all-items).

A family unit with income below the cut-off for its family size in an urban region of a given size or a rural region, is a low income family.

LICO levels remain in effect for one year (see the LICO chart in the sponsorship kit for current validity dates).

Applications to sponsor are assessed against the current LICO level. If a visa office requests a re-assessment, CPC staff use the LICO in effect on the day they re-assess. When an A27(1) report or charges delay assessment, the LICO on the date assessment resumes is used.

2.3.2 Criteria for referring a case to a CIC

CPCs will refer some cases to CICs for investigation.

The referral criteria are:

- Suspected violation of the *Immigration Act* which could lead to an A27(1) report and enforcement action against the sponsor. This would include cases where criminal charges are pending against permanent resident sponsors (see sections **10.** *Charges Laid* and **12.**, *Subject to an A27(1) Report*).
- Cases of suspected fraud on eligibility criteria or suspected fraud regarding employment letters or financial requirements
- Cases identified for quality assurance monitoring
- An officer at the CPC believes a personal interview is necessary to properly assess an application

After dealing with the referral, CICs must return the complete file to the CPC.

CPC staff will record the undertaking in CPCS and file sponsorship forms for use in case of default.

2.3.3 Forwarding *Met* applications to the responsible visa office

Except for cases involving applicants with names and addresses in Chinese characters, CPC-M informs visa offices by E-mail when it approves sponsorship applications (see **APPENDIX D**).

CPC-M provides additional documents or information to visa offices in some cases.

For sponsors who received visas abroad to come to Canada as refugee or adopted immigrants, CPC-M will include in the E-mail any relevant information that might help the visa office locate information from the sponsor's immigrant file such as the office of visa issuance, file number, etc.

Visa offices may ask CPC-M for copies of IMM 1000s of other sponsors.

Some sponsors were immigrants landed subject to terms and conditions. CPC-M will inform visa offices the date these terms and conditions were met, or must be met. In the latter case, CPC-M will verify terms and conditions have been met at the request of visa offices. Visa offices should not delay visa issuance if processing is complete before terms and conditions must be met.

> ***Note:*** *When sponsors fail to meet terms and conditions of landing, they are written up in an A27(1) report. When this happens processing of any application for permanent residence they sponsored is suspended until final disposition of the report.*

2.3.4 *Not Met* applications are mailed to the responsible visa office

When sponsors do not meet the requirements to sponsor or give an undertaking, CPC-M informs them why their application to sponsor is *Not Met.*

Although there is no sponsorship, CPC-M will still send the undertaking to a visa office. It will include a copy of the WIP transcript and a detailed explanation why the application to sponsor is *Not Met.* All reasons are provided. Example: R5(2)(a) - not a sponsor and R5(2)(f) - insufficient income.

The persons named in the application to sponsor may still apply for permanent residence.

There are no refunds of the processing fee.

If the sponsor has not met the income test, CPC-M also attaches the *IMM 1283 - Financial Evaluation* form. This information helps document a refusal under A77(1)(b) for inability to meet R5(2)(f). Spouses and minor children may be refused under A19(1)(b).

> ***Note:*** *For a detailed explanation of the interaction between A19(1)(b) and R5(2)(f) and when it is appropriate to refuse a spouse or child under A19(1)(b), see OP 2, section 14.3.1 - Applicability of A19(1)(b) in relation to sponsor's responsibility under R5(2)(b).*

2.4 Adopted or to be adopted children and orphaned relatives

Sponsors may submit an undertaking in support of an application for permanent residence made by any of:

- A dependent son or daughter whose adoption was finalized before reaching age 19.
- Any child under 19 years of age whom the sponsor intends to adopt and who is any of the following:
  - an orphan;
  - an abandoned child whose parents cannot be identified;
  - a child born outside of marriage and who has been placed with a child welfare authority for adoption;
  - a child whose parents are separated and who has been placed with a child welfare authority for adoption;
  - a child, one of whose parents is deceased, and who has been placed with a child welfare authority for adoption; or
  - an orphaned, unmarried brother, sister, nephew, niece, grand-son or grand-daughter under 19 years of age.

When children are already adopted, their sponsors must provide the date of the adoption and a copy of the adoption order with the IMM 1344A.

For children to be adopted, sponsors indicate if the adoption will take place in Canada or abroad. Sponsors must also state the country where the child is living. This country is not always the same as the child's country of citizenship. The country of residence is required no matter where the adoption will take place. CPC-M uses this information to select the responsible visa office. It must also provide this information to provincial authorities.

2.4.1 Unidentified children to be adopted

Sponsorships may be for children who are not yet identified.

Sponsors must state on the sponsorship application from which country they intend to adopt.

In the sponsorship approval letter, CPC-M will instruct sponsors to inform provincial adoption authorities of the children's names as soon as they are identified.

CPC-M will also instruct sponsors to submit applications for permanent residence at the visa office responsible for the country from which they intend to adopt, once the children are identified.

2.4.2 The financial test

Sponsors of children to be adopted must meet the financial test. So must sponsors of orphaned brothers, sisters, nephews, nieces, grand-sons or grand-daughters.

Only persons sponsoring adopted children are exempt from the financial test. They are the sponsor's child and are exempt under R6(3).

2.4.3 Letter of no-objection

For adopted and to be adopted children, as well as orphaned relatives, the province where the child will live must state in writing it does not object to the arrangements for the reception and care of the child [R6(1)(c)]. This is commonly called a "no objection letter". Some provinces may issue a letter of "no involvement." This letter is also acceptable for the purposes of R6(1)(c).

The provincial authority may complete a home study before issuing the letter of no objection. Procedures differ from province to province. Sponsors should read the brochure *International Adoption and the Immigration Process*. It provides information about the responsible authority in each province (see **APPENDIX E**). This brochure is available from Call Centres.

CPC-M does not require letters of no objection/involvement to process and approve undertakings. CPC-M asks provincial authorities (see **APPENDIX E**) to send the letters directly to the appropriate visa office. It will also forward any letters it receives from the provinces to visa offices.

If sponsors live in Quebec, CPC-M forwards the undertaking to the *Ministère des Relations avec les Citoyens et de l'Immigration* (MRCI). It also sends a letter to sponsors instructing them to contact the MRCI to sign an *engagement*. The MRCI assesses sponsors. It sends copies of the *engagement* to the sponsor (see section **14.**) The *Service à l'adoption internationale du Québec* is responsible for issuing letters of no-objection. It sends them directly to adopting parents.

2.4.4 Adoptions in countries which have signed the Hague Convention

Amendments to the *Immigration Regulations* required by the *Hague Convention on Intercountry Adoptions* came into force April 1, 1997 (see OM IP97-19 for background information). This date coincided with implementation date of the *Convention* in Canada, in those provinces which took legislative steps to conform to it.

There are two principal regulatory requirements that must be met when the *Convention* applies. The central authorities of the receiving province and the country of origin must agree to a child's placement. Also, immigration requirements must be met before an adoption can take place.

The *Convention* applies when both the province where a sponsor lives and the country where the child lives have ratified and implemented the Convention (see **APPENDIX G** for a list of countries and provinces). If either condition is missing, the Hague Convention does not apply.

> ***Note:*** *The country where the child lives and not the country of the child's nationality determines if the Convention applies.*

Provincial central authorities are responsible for determining if the *Convention* applies to a case. When they so decide, the amendments that came into effect on April 1, 1997 also apply.

A pamphlet entitled *The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* is available through Call Centres. It explains to prospective adoptive sponsors how to contact provincial authorities for information about applying to adopt and provincial requirements.

2.4.5 Notification of agreement to the adoption proposal and immigration processing for Hague cases

CPC-M does not determine if an adoption is subject to the Hague Convention. After approving sponsorships CPC-M staff send a letter to the provincial authority (see **APPENDIX H**) requesting issuance of either a letter of no objection (non-Hague case) or a notification of agreement to the adoption proposal (Hague case). The provincial authorities are in a better position to make the determination between the two types of cases and inform the visa post accordingly.

CPC-M also asks the province to send the applicable letter directly to the appropriate visa office. It will also fax and forward any letters it receives from the provinces to visa offices. These measures reduce processing delays.

Visa officers cannot issue immigrant visas in Hague cases without a notification of agreement from the provincial central authority.

When the child meets all immigration requirements, the visa office notifies (see **APPENDIX I**) the provincial central authorities an immigrant visa will be issued.

Before issuing an immigrant visa, the visa officer must verify the sponsors have authority to take the child to Canada. Authority may be the adoption order if it has already taken place, or a custody order if it will occur in Canada. Visa officers must also verify the child has a travel document before issuing an immigrant visa.

2.4.6 Cost recovery and changing the child's name on the IMM 1344A

In adoption cases the principal applicants are minors under 19 years of age. They are dependants of their sponsors, who pay the processing fee for a dependant under 19 years of age.

Sponsors who cancel sponsorships cannot receive refunds.

If a sponsored child is no longer available for adoption, sponsors can ask CPC-M to replace the name on the IMM 1344A with the name of another child. CPC- M will not charge a new processing fee when it replaces a name for this reason.

CPC-M must provide the new name to the visa office and the provincial adoption authority. Visa offices should provide the new name to CPC-M and the provincial adoption authority if they are informed first.

If the name change results in a file transfer, sponsors must pay the fee for this service.

2.4.7 Orphaned relatives under 19 and unmarried

An orphan is a person whose parents are both deceased.

CPC-M will include the following remarks in the E-mail notification (see section **2.3.4** above):

- *Case processed as an orphan (FC5) based on information received from sponsor. As soon as you determine that it is a genuine FC5 case, please inform CPC-M. CPC-M will request a provincial written statement of no-objection on receipt of this information.*

Visa officers must verify if the child is an orphan (both parents are deceased), under 19 at the time of the sponsorship approval, unmarried, and related to the sponsor as set out in the regulation.

Once visa officers verify these conditions are met, they issue medical instructions. They also ask CPC-M to obtain a written statement of no objection from the child welfare authority of the province of destination (see **APPENDIX F**).

Note: *The question of guardianship arises in the case of young immigrants who are not accompanying or are not destined to a legal guardian. Officers must resolve the question of guardianship to the satisfaction of all concerned, whether in Canada or abroad. For the child's protection and well-being, visa*

officers should counsel sponsors to obtain legal guardianship of the child upon the child's arrival in the province of residence. This will ensure that the sponsor has legal obligations towards the sponsored child.

2.4.8 Requests for no objection/no involvement letters from the province of destination

For orphan cases, the child welfare authority of the province of destination must state in writing that it has no objection to the proposed arrangement for the reception and care of the orphan [R6(1)(c)(ii)].

Some provinces may issue a letter of "no involvement". This letter is also acceptable for the purposes of R6(1)(c).

Ontario sends a letter of no involvement with a recommendation on the child's placement from a licensed social worker.

Manitoba and Alberta provinces have officially requested CIC not ask them for the written statement of no objection. Neither province has a legal mandate to make such statements. For these two provinces, it is not necessary to obtain a no objection letter. Instead, visa officers should counsel sponsors to apply at the appropriate provincial court for guardianship as soon as the child arrives in the province.

Some applicants are over the age limit for the provincial involvement in their placement (see **APPENDIX J**). Visa officers do not require no-objection or no-involvement letters to issue visas to these applicants.

Visa officers will not request sponsors to obtain the provincial written statement of no-objection. Requests for letters must come from CIC (see OM IS 94-12 for adoption cases).

Visa officers do not need to request the letter of no-objection when sponsors live in Quebec. The MRCI approve *engagements* for orphans cases only after it receives a positive recommendation on the child's placement from a *Centre Jeunesse* (see GPS-6-5- MRCI Selection procedures guide). The approval of the *engagement* by MRCI is always conditional upon the recommendation made by a *Centre Jeunesse*. The recommendation is based on a home study done on the sponsor.

2.5 Applicant is not a member of the family class

2.5.1 What does CPC-M do?

CPC-M sends the sponsorship information to the visa office with a note that the applicant is not a member of the family class.

CPC-M informs the sponsor the person listed on the *IMM 1344A* is not a member of the family class. It also explains only members of the family class may be sponsored.

CPC-M still sends the undertaking to a visa office (see section **2.3.4** above).

Processing fees are non-refundable.

2.5.2 What does the visa officer do?

If the non-member of the family class makes an application the visa officer determines if the applicant is a member of the family class.

If this applicant asks to be assessed against the selection criteria in *Schedule I* of the *Immigration Regulations*, the visa officer should assess the application as outlined in Chapter 5 of the OP manual.

Refuse as outlined in the same chapter, applicants who asked for assessment against the *Schedule I* criteria, but who do not meet these criteria.

If applicants ask for consideration on humanitarian and compassionate grounds, visa officers must be guided by the instructions in sections 10. and 21. of Chapter 1 of the OP manual.

Note: *Do not send a notification of appeal to sponsors where the applicant is clearly not a member of the family class, i.e. the person submitting the sponsorship describes a relationship other than that of member of the family class. When in doubt, err on the side of caution and send a notification of appeal to the sponsor.*

2.6 Withdrawal of undertakings

2.6.1 What to do if a sponsor wants to withdraw an undertaking?

An undertaking is a contract between the sponsor (and co-signer if applicable) and the government of Canada.

Subject to CPC agreement, sponsors may withdraw in writing their undertaking. CPC-M cannot agree to withdrawl if an immigrant visa has been issued. CPC-V cannot agree to withdrawl if a waiver of subsection 9(1) of the *Immigration Act* has been granted (see section **6.9** of Chapter 5 of the IP manual).

CPC-M verifies no immigrant visa has been issued and acknowledges withdrawal of the undertaking. Details are entered into FOSS.

If the applicant asks to be assessed against the selection criteria in *Schedule I* of the *Immigration Regulations*, the visa officer should assess the application as outlined in Chapter 5 of the OP manual.

Otherwise, the visa office refuses the application for permanent residence. There is no sponsor and no appeal right.

2.6.2 What to do if the co-signer withdraws

CPC staff verify immigrant visas have not been issued or that A 9(1) has not been waived. If neither of these events has occurred, they acknowledge the co-signer's withdrawal from the undertaking.

The acknowledgment letter will remind co-signers they are bound by the sponsorship agreement if the applicant becomes an immigrant.

If the co-signer provides a copy of the sponsorship agreement, initialed by the sponsor and applicant to indicate they agree to the co-signer's withdrawal, the co-signer is no longer bound by its terms.

When co-signers withdraw CPC-M will reassess the sponsor's income against the LICO (see also section **2.9** below) and inform visa offices. When reassessing, only the sponsor's income for the 12 months prior to reassessment will be taken into account. If the sponsor's income is equal to or greater than the LICO on reassessment, a visa may be issued. If the sponsor does not meet the income test on reassessment, the visa office refuses the applicant.

If the sponsor does meet the income test and the applicant becomes an immigrant, the co-signer will be bound by the terms of the sponsorship agreement if the sponsor and applicant did not agree to the co-signer's withdrawal.

2.7 What to do when additional dependants come to light?

2.7.1 Non-accompanying dependants

CPC-M's E-Mail informing visa offices of the undertaking includes the maximum number of persons for whom the income test is met. Visa officers need not contact CPC-M for a reassessment of the sponsor's financial situation if previously undisclosed non-accompanying dependants come to light during processing.

2.7.2 Accompanying dependants

If previously undisclosed dependants are accompanying dependants, the visa office must determine if the LICO is still met (based on CPC-M's assessment of the sponsor).

If the LICO is still met, the visa office asks CPC-M to arrange for the sponsor to add the dependant to the undertaking. A processing fee applies to the addition of a dependant.

Sponsors, co-signers and applicants must also amend their sponsorship agreement. CPC-M will have the sponsor and co-signer add the dependant to their copy of the sponsorship agreement. The visa office will ensure applicants add the dependant to their copy of the sponsorship agreement.

2.8 Authority to sponsor - visa office decides

Visa officers determine whether or not a sponsor is *authorized* or *not authorized* to sponsor. CPC-M simply makes an initial determination.

Visa officers may issue immigrant visas only if all requirements of R5(2) are met [see R6(1)(b)].

If visa officers have reason to belive a sponsor's income has declined, they can ask CPC-M to recalculate it once applicants have met all other requirements for visa issuance (see section **2.9** below).

Visa officers may refuse applications for permanent residence if any requirement of R5(2) is not met before visa issuance.

Visa officers should realize some sponsors who failed the requirements of R5(2) when CPC-M made the initial assessment, will meet them before visa issuance, e.g. a bankrupt sponsor is discharged during the processing period, a sponsor is released from prison, or a correction is made to the size of the family unit used to select the applicable LICO (see section **6.5**).

> ***Note:*** *Family size may decrease or increase after CPC-M makes its initial assessment. The change can affect the LICO a sponsor must meet. CPC-M's E-Mail informing visa offices of the undertaking includes the maximum number of persons for whom the income test is met (see section* **2.7.1***). Visa officers need only compare family size prior to visa issuance with this maximum number. If it is equal to or less than this maximum number, the financial requirement is met.*

2.8.1 What to do if the sponsor's circumstances change during processing?

CPC-M should inform visa offices when sponsors' circumstances appear to change in any way that might affect their ability to meet any of the requirements of R5(2).

When visa officers have reason to believe reassessment of the sponsor is material to the visa decision, they can ask CPC-M to investigate further.

2.8.2 The financial test cannot be *Met* after negative CPC-M determination

The income requirement [R5(2)(f)] cannot be changed to *Met* after processing begins. The wording of this regulation states the income test must be met *at the date of giving the undertaking.*

In order to meet R5(2)(f) after a negative CPC-M determination, sponsors must reapply and pay fees again. Kits clearly inform clients that once a decision is made on their financial situation, the matter is closed.

2.9 Reassessment of income after giving an undertaking

R6(1)(b.1) allows recalculation of the sponsor's income if it no longer appears to meet the requirement of R5(2)(f). The new calculation is based on the 12-month period before the date the visa office informs CPC-M the applicant and dependants meet the requirements, i.e. just before making a final decision.

> ***Note:*** *The reassessment can be done only when the applicant has met all other requirements. Income may fluctuate during the processing period. One*

common point of review after other requirements are met ensures consistent treatment of sponsors.

Note: *The sponsor may have met the income test with the assistance of the co-signer. Information leading the visa officer to believe the co-signer is no longer able or willing to provide financial assistance would be sufficient to reassess the sponsor's financial situation, e.g., a marriage breakdown or the co-signer is now unemployed.*

CPC-M is responsible for recalculating sponsors' incomes. CPC-M is the central repository for all sponsorship and default information received from provincial social assistance authorities. It is in the best position to reassess the sponsors' income levels and to record the new information in FOSS.

2.9.1 How does CPC-M recalculate the income test?

Visa officers inform CPC-M why they believe settlement arrangements are no longer met.

CPC-M asks the sponsor to complete a new *IMM 1283*. It then recalculates the sponsor's gross Canadian income (minus financial obligations) for the 12 months preceding the date on which the visa officer informed CPC-M the applicant met all other requirements. After recalculating the sponsor's income, CPC-M staff update FOSS and inform the visa office of the results.

If the income available is less than the applicable LICO, the visa officer cannot issue an immigrant visa [see R6(1)(b)]. The application for permanent residence is refused under A77.

3. THE SPONSOR

3.1 Who can sponsor?

Only persons who meet the definition of *sponsor* may submit sponsorship forms [R5(2)(a)].

There are two types of sponsors. Most sponsors reside in Canada (see part a) of the definition. Part b) of the definition provides an exception for Canadian citizens who reside in another country and who wish to sponsor a spouse or children.

The WIP event for failed applications is *R5(2)(a) - not a sponsor.*

3.2 Sponsors in Canada

These sponsors have to meet all of the following requirements:

- Canadian citizens or permanent residents 19 years of age or more

  Note: *Birth certificates, citizenship cards, passports, records of landing can all be used to prove age and Canadian citizenship or permanent resident status. FOSS can also be used to verify permanent residence. A Citizenship Commemoration Certificate is NOT to be accepted as proof of citizenship.*

- Reside exclusively and without interruption in Canada from the date of giving the undertaking until the member of the family class is landed

  Note: *Foreign stamps or post marks on the envelope, a foreign employer or the sponsor's non-Canadian address are indications the sponsor may not be residing in Canada.*

  Sponsors are disqualified if they maintain residences in two countries at the same time, e.g. their house is in Canada, but they work abroad. For greater clarity, the regulation specifies that persons who interrupt their residence in Canada are disqualified from sponsoring. For example sponsors may meet the strict definition of permanent resident in that they have not abandoned Canada as their place of permanent residence. However, for all intents and purposes it is as if they are not residents of Canada because they spend almost no time in this country. They have interrupted their residence in Canada.

  This section of the regulation is not meant to disqualify persons who take short holidays or business trips outside Canada.

- Satisfy an immigration officer they will continue to reside in Canada after the relative is landed

  Note: *Sponsors are not required to live in Canada permanently, but they are expected to reside in Canada immediately after their relative is landed. If there is evidence sponsors will leave Canada soon after their relative's landing, the application for landing can be refused because the person is not authorized to sponsor. These requirements are all aimed at ensuring the sponsor will be present to support the immigrant in Canada.*

3.3 Canadian citizen sponsors living abroad

Canadian citizens residing abroad can sponsor their spouse and/or unmarried children under the age of 19 and without children of their own.

They must meet all of the following requirements:

- Satisfy **a visa officer** they *reside exclusively outside Canada on the date of giving the undertaking*

  Note: *Canadian citizens who are long-term workers or students in another country would generally be considered residents of that country. Canadians*

who are tourists in the foreign country, even for extended periods, would not qualify: they are not residing "exclusively" in the foreign country since they are still residents of Canada.

Note: *Canadians who have spent little or no time in Canada may also seek to sponsor. Before issuing immigrant visas you must be satisfied they and their families will be residing in Canada. Since some may have never worked in Canada and may not have the educational or language skills to find employment in Canada, refusal under A19(1)(b) is appropriate if arrangements for the care and support of the immigrant are not satisfactory.*

- Satisfy **a visa officer** they will reside in Canada after their relative is landed

  Note: *They must reside in Canada as soon as the spouse/child are landed, and not at some later date. Examples of evidence they will reside in Canada include: letter from an employer relocating the sponsor to Canada, letter of acceptance to a Canadian educational institution, proof of having rented/ bought a house in Canada, reasonable plan for re-establishing in Canada or severing ties to the other country.*

  Note: *Sponsors are not required to live in Canada permanently, but they are expected to reside in Canada immediately after their relative is landed. If there is evidence sponsors will leave Canada soon after their relative's landing, the application for landing can be refused because the person is not authorized to sponsor. These requirements are all aimed at ensuring sponsors are present to support the immigrant in Canada.*

3.4 What to do if the person is not a sponsor

CPC-M sends the sponsorship information to the visa office (see 2.3.5 above) with details of why R5(2)(a) is *Not Met*.

If the sponsored person submits an application for an immigrant visa, the visa office refuses the application. It sends a notification of appeal only if the person who submitted the sponsorship is a Canadian citizen or permanent resident 19 years or older.

If the sponsor is under the age of 19, the visa office may delay processing for a few months until the sponsor is old enough to sponsor.

4. THE UNDERTAKING

4.1 What is an undertaking?

Sponsors must give an undertaking to the Minister in support of their relative's application for permanent residence. The undertaking is completed and signed on form IMM 1344B.

An undertaking is a promise by the sponsor (and co-signer) to provide for the essential needs of the member of the family class and the member's dependants and to ensure that they are not dependent on social assistance, i.e. items listed in *Schedule VI* of the *Immigration Regulations*.

Sponsors of spouses and minor children also sign an undertaking. They are obligated to care for their spouses and minor children even if they do not have to meet an income test.

Except in Quebec (see section **14.1.1**), undertakings are binding for 10 years.

4.2 Obligations of an undertaking

The sponsor (and co-signer) receive detailed information on the obligations they are assuming, what is meant by default and the consequences of default [see also section **7.** on *Default*]. Their signature acknowledges they understand what the undertaking entails.

Sponsors must provide essential needs to their relative, including shelter, food, clothing and other goods or services necessary for day to day living The latter include dental and eye care, and medical care not provided by provincial health insurance programs.

If sponsored immigrants receive social assistance, as described in *Schedule VI* of the *Immigration Regulations*, sponsors and co-signers are in default. They cannot sponsor again. They may also have to repay welfare given to the sponsored immigrant or face legal action.

The wording of the IMM 1344B facilitates litigation by clearly outlining for the courts what was expected of the sponsor.

Should the sponsor not submit an undertaking, the WIP event is *R5(2)(b) - no undertaking*.

4.3 Withdrawing the undertaking

Undertakings may be withdrawn only if immigrant visas have not been issued.

See section **2.6** *Withdrawal of Undertakings* for procedures if a sponsor or co-signer wants to withdraw the undertaking.

5. CO-SIGNERS

Sponsors may count their spouse's gross income to meet the income test. When this happens the spouse is a co-signer.

The methods for calculating gross income described in section 6, *The Financial Test*, apply to co-signers as well as sponsors.

5.1 Who may co-sign?

Only the sponsor's spouse may co-sign. Income from other family members cannot be considered.

Married or common-law spouses of the opposite sex may be co-signers. Common-law spouses must have lived with the sponsor in a conjugal relationship continuously for one year before the sponsor submits the undertaking.

> ***Note:*** *Sponsors and co-signers may still be married to other persons provided they have been in a conjugal relationship with each other for at least one year.*

5.2 Requirements to co-sign

Co-signing spouses must meet the same eligibility criteria as the sponsor.

They must be:

- Canadian citizens or permanent residents of Canada, 19 years of age or over
- Residing in Canada exclusively and without interruption and will continue to reside in Canada during the processing period and after the sponsored immigrant arrives in Canada
- Not under a removal order
- Not in prison
- Not bankrupt
- Not in default of an undertaking which the co-signer previously gave or supported
- Not in default on a transportation or ROLF loan
- Not charged with a serious offence
- Not subject of an A27(1) report

Co-signers must sign the undertaking and the sponsorship agreement between the sponsor and immigrant. If they do not sign, their income cannot be counted [R5(2)(i)].

5.3 Obligations and consequences of co-signing

Upon signing the undertaking, co-signers become equally responsible for supporting the immigrants and face the same penalties if there is a default.

The possible penalties are:

- Requirement to support the sponsored immigrants if the sponsor defaults
- Repayment of welfare given to the sponsored immigrant or legal action by provinces or the federal government to recover social assistance paid to the sponsored immigrant [A118(2)]
- Bar on future sponsorship or support for another undertaking unless they repay, or make arrangements to repay, the social assistance paid to the sponsored immigrants

Persons the co-signer previously sponsored or co-signed for are considered part of the sponsor's family when determining LICO [R5(3)].

Note: *The previously sponsored relatives of the sponsor's spouse are factored into the calculation of LICO only if the spouse is co-signing.*

5.4 Co-signers are not sponsors

Co-signers are not sponsors: They do not have a right of appeal against a refused family class application for permanent residence even if they could sponsor in their own right, e.g. a mother who co-signs her husband's sponsorship of a child cannot appeal a refusal of the application for permanent residence.

If a sponsor withdraws an undertaking for a child, ensure the co-signer also withdraws the co-signature on the undertaking if the co-signer is the other parent of the child.

Note: *Co-signers should normally not co-sign when financial requirements are not applicable, or if the sponsor meets the income test. The co-signer's role is simply to help the sponsor meet the financial test when necessary. If they choose to sign, they become equally liable with the sponsor in case of default.*

5.5 Assessing co-signers

CPC staff will decide if co-signers qualify under the regulations. The income of spouses who do not qualify cannot be factored into the sponsor's income.

If the spouse does not qualify as a co-signer, determine whether or not the income test is met using the sponsor's income only. The WIP event if income requirements are not met is *R5(2)(f) - insufficient income*.

CPC-M staff will send the undertaking to the visa office with an explanation why the income test was not met. They will also inform the sponsor the undertaking has been sent to a visa office, but the income test is not met.

Note: *The wording of R5(2)(f) does not allow immigration or visa officers to recalculate the sponsor's income upwards if it is not met when the undertaking is given (see section* **1.5.2***).*

6. THE FINANCIAL TEST

6.1 Why is there a financial test?

Sponsors must not only be willing to support their relatives. They must also prove they can support them, for ten years if necessary. A sponsor's ability to honour an undertaking is assessed through a financial test [R5(2)(f)].

6.2 Who must meet the financial test?

With one exception (see section **6.2.1** below) all sponsors must meet a financial test [R6(3)].

6.2.1 Financial test exemption for spouses and/or minor children

The only exception from the financial test applies to sponsors of spouses and dependent sons or daughters. The dependent children must all be unmarried, under age 19 and without children of their own. If the sponsorship includes a dependent son or daughter over the age of 19 whether accompanying or not, or the child of a dependent son or daughter, the income test applies to the entire family.

> ***Note:*** *The reference to R6(3) is also found in R5(2)(f). It exempts spouses and underage children from the financial test. Because the exemption applies at the time the undertaking is given, i.e. children who are over the age of 19 when the visa officer is ready to issue a visa are not subject to the income test for sponsors.*

Spouses and minor children may still be refused on a case by case basis citing A19(1)(b). They may be unable or unwilling to support themselves and have not made arrangements for their support. Refer to OP 2, Section 14.3.1 - *Applicability of A19(1)(b) in relation to sponsor's responsibility under R5*.

6.3 Financial test covers 12 months

Sponsors must show they have a record of stable income over a 12-month period.

The sponsor's gross income for the 12 months before the date of receipt of the application to sponsor (IMM1344A), the undertaking (IMM 1344B) and the correct fees minus the sponsor's financial obligations over the same period, equals the income available to support the sponsored relatives.

The sponsor may include a spouse's income to meet the LICO (see section **5.**on Co-signers).

The sponsor's total income minus debts is compared to the LICO. The sponsor's income must meet or exceed the LICO. (see IR 2 - *Low Income Cut-off of Family Units* and the sponsorship kit).

> ***Note:*** *Since September 18, 1996 Census Metropolitan Areas (CMA) determine which LICO corresponds to the sponsor's family unit. Sponsors consult a list in the sponsorship kits to find out if the city or town where they live is part of a CMA. If it is, they must use the population of the CMA to select the correct LICO for the size of their family unit.*

6.3.1 No discretion in calculating LICO

Only the sponsor's and co-signer's income (and financial obligations) are taken into account in evaluating the sponsor's financial situation.

Persons who do not quite meet LICO cannot be authorized to sponsor even if they have good employment prospects, extensive assets or relatives willing to provide additional support.

> ***Note:*** *Visa officers are not to take into account the applicant's potential worth or transferable pensions if the sponsor does not meet LICO. Standing*

instructions in OP 2, Section 14.3.1, Situation 5, state that when a sponsor does not meet the requirements, the application cannot be approved in the family class even if the immigrant is able and willing to provide care and support.

When sponsors subject to the income test do not meet R5(2)(f), refusals must be based on A77(1)(a) linked with R5(2)(f). Do not refuse these cases under A19(1)(b).

Alternatively, if the sponsor need not meet the income test, e.g. for a spouse or minor child, but refusal is warranted, the applicant is inadmissible under A19(1)(b).

A detailed explanation of how to refuse such application is found in section 14.3 - *Sponsor does not meet settlement arrangements*, of Chapter 2 of the OP manual.

6.3.2 Proof income covers 12 months

Sponsors must show their income tax Notice of Assessment for the previous year and check stubs for portions of the year for which they have not yet received a notice of assessment.

Sponsors may submit proof of income for periods of less than 12 months. If this income meets or exceeds the LICO, they may still meet the financial requirements for sponsorship.

6.4 Canadian income only:

Only income of Canadian origin is taken into account to determine the sponsor's financial situation.

There are several reasons income must be from Canadian sources.

Employment income abroad is not a reliable indicator of future or stable employment in Canada.

CPC staff cannot easily verify if foreign income can be transferred to Canada.

Converting foreign income into Canadian dollars imposes an overly heavy burden on the CPCs' resources.

In case of default and litigation, it is easier to recover income from Canadian sources.

6.4.1 Exceptions to Canadian income rule

There are two exceptions to the Canadian income rule.

Sponsors who commute from their residence in Canada to work in the U.S.A. can use their U.S. employment income.

Sponsors who live in Canada (see section **1.5.1** above) and who declare income from foreign sources on their Canadian tax returns, can use this foreign income to meet the financial requirements for sponsorship.

6.5 Size of family unit used to calculate the LICO

The size of the family unit determines the amount of income required to sponsor [R5(3)(a) and (b)].

Sponsors count themselves as well as any spouse and dependent children.

They also count persons covered by other still valid undertakings they have made or co-signed.

They add the persons they are now sponsoring, including all dependants of the sponsored person and any spouse, whether these dependants are accompanying or not.

If the sponsor's spouse is co-signing, persons covered by still valid undertakings made or co-signed by the spouse must also be counted [see R5(3)(b)(ii)].

The total is the size of the family unit. This total determines in combination with the urban or rural region where sponsors live, which LICO they must use.

6.5.1 Meaning of dependant for sponsorship purposes

The definition of dependant in R2(1) has three parts. Part (c) of the definition applies for sponsorship purposes. It includes spouses of principal applicants, dependent sons and daughters of principal applicants or their spouses, and dependent children of dependent sons and daughters of principal applicants or their spouses.

Dependent sons and daughters are unmarried and under age 19. They may also be single or married full-time students over age 19 and financially supported by their parents since their 19th birthday, or the date of their marriage if they married before age 19. Disabled children over age 19 who cannot support themselves and are supported by their parents are dependent sons and daughters as well.

6.5.2 Sponsored applicants not yet landed included in size of family

Sponsors must list sponsored applicants on the IMM 1283 - *Financial Evaluation* form. Sponsored applicants may not have been landed yet. They will become part of the family unit on landing (see section **6.5** above). To ensure visa officers have at the outset all the information they need to determine R 5(2) requirements are met at visa issuance, sponsors must include these applicants in the family unit.

This practice also helps sponsors focus on the extent of the responsibilities they are assuming. They will be held liable if they default and should make an informed decision to sponsor.

If the sponsor fails the financial test because of the sponsored applicants, CPC-M will alert the visa office. The visa office must verify if they have been landed or refused before making a decision on the next application. If the sponsored applicants have been landed, the visa office must refuse the next application for permanent residence because the sponsor does not meet the financial test. If they have been refused, the visa office may be able to approve the new application.

6.6 Size of sponsor's place of residence of CMA determines LICO

The size of the sponsor's community or CMA determines which LICO figure is used [see R5(3)(b)].

The place of residence of other persons counted in the family unit (see section **6.5** above) is never used to determine the correct LICO.

6.7 How to calculate the sponsor's available income

Payments made, or still due, on financial obligations, are deducted from gross income.

Gross income includes:

- Employment, self-employment, pension, business and investment income
- Workers compensation - this is replacement income for someone injured on the job until they return to work
- Disability income paid by the Canada Pension Plan (CPP) - this is pension income
- Maternity, parental and sickness benefits paid under the *Employment Insurance Act*
- Overtime and tips reported on the income tax return and the notice of assessment

Gross income excludes:

- Provincial training allowances, guaranteed income supplements, child tax benefits and payments under Schedule VI (i.e. social assistance)

- Employment insurance payments other than maternity, parental and sickness benefits, i.e. benefits paid to unemployed or seasonally employed workers is not income for sponsorship purposes

Financial obligations include:

- All financial obligations such as personal loans, student loans (including loans on which payments have not yet begun), transportation loans, ROLF loans, interest on credit cards, property and school taxes, insurance payments, alimony payments and garnishments (court directed payments such as child support), paid in the last 12 months or still due
- Business expenses and investment expenses deductible under the *Income Tax Act*
- Second mortgages on a principal residence, or any mortgage or rent on a secondary residence

Financial obligations exclude:

- First mortgages or hypothecary loans (in Quebec), or rent payments for a principal residence

> ***Note:*** *The meaning of "financial obligation" is not limited to the examples on the IMM 1283 - Financial Evaluation form. However, officers should not impose their own interpretation of these words. They may refer queries or suggestions to the Social Policy and Programs Division (SSG) of Selection Branch who will determine if the item can be considered a debt.*

6.7.1 Types of Income

Employment income is gross income from a job as reported to Revenue Canada. It does not include employment insurance benefits unless they are maternity, parental or sickness benefits.

Business income is the gross income reported to Revenue Canada from activities conducted for profit from a sole proprietorship, partnership or unincorporated business. It may include income from professional practices, trades and businesses such as small retail outlets and restaurants. It does not include self-employed earnings.

Investment income is income reported and accepted as such by Revenue Canada from dividend payments, interest, savings deposits, stocks, bonds and other investments.

Self employment earnings is the gross income reported to Revenue Canada from self-employment such as farming, fishing, commission sales, consulting and child-care conducted for profit. It does not include business income.

Pension income is income from Old Age Security (OAS), CPP and Quebec Pension Plan, other pensions, superannuation and annuity payments. It does not include Guaranteed Income Supplements (GIS) payments.

6.7.2 Calculating income over a maximum of 12 months

Sponsors must have earned income that equals or exceeds the LICO in a maximum of 12 months before *the date of giving the undertaking*.

Sponsors may submit proof of income for periods of less than 12 months. If this income equals or exceeds the LICO, they may still meet the financial requirements for sponsorship.

Income earned after the undertaking has been given cannot be considered unless the visa officer has requested a reassessment (see sections **2.8** and **2.9** above).

Sponsors who do not meet the LICO cannot request reassessments of their financial situation after giving their undertaking.

Sponsors who spontaneously submit an IMM 1283 after failing the financial requirement for the undertaking they have given, are submitting a new application to sponsor. They must pay a new processing fee with the new application.

The income must be **earned** in the 12 months before giving the undertaking. Income projections cannot be counted.

6.7.3 When is the Income test *Not Met*?

R5(2)(f) is *Not Met* if the sponsor's income is not at least equal to the LICO, or the income is not from a Canadian source.

The WIP event when the sponsor does not meet the financial test *is R5(2)(f) - insufficient income.*

7. DEFAULT

7.1 When does default occur?

Sponsorship obligations continue even if the sponsor's or co-signer's situation changes. Separation or divorce from a sponsored spouse or co-signer does not cancel the sponsorship obligations. Nor do family rifts or periods of unemployment.

Sponsors who fail to live up to their obligations for these and other reasons may be in default.

Sponsors and co-signers are in default if they have not honoured a previous undertaking they gave or co-signed, or have not repaid a transportation, adjustment assistance, admissibility or Right of Landing Fee loan (see R45).

7.2 What is meant by *default of an undertaking*?

Sponsors are in default when an applicant they previously sponsored, during the validity period of the undertaking, receives or received social assistance under provincial acts listed in *Schedule VI* of the *Immigration Regulations*.

This definition of default is based on A118 and R56.

A118(2) states payments that result from a breach of an undertaking may be recovered. R56 states payments resulting from a breach of an undertaking are prescribed in *Schedule VI*. It in turn lists the social assistance acts of all provinces except Quebec. The expression *default of an undertaking* means a *breach of an undertaking*.

7.2.1 Recovery of social assistance costs

Any payments of a prescribed nature made directly or indirectly to an immigrant because of default of an undertaking may be recovered from whoever gave the undertaking. These payments may be treated as a debt to Her Majesty in right of Canada or in right of the province to which the undertaking is assigned [A118(2)].

Social assistance payments may be recovered from the sponsor in any court of competent jurisdiction as a debt due to Her Majesty in right of Canada or in right of the province to which the undertaking is assigned.

7.2.2 Assignment of undertakings to provinces

The Minister may assign undertakings to provinces [A118(1)]. This authority has been delegated to the Manager, CPC-M through *Instrument I-4*.

Provinces request assignment of an undertaking in writing (see **APPENDIX K**). They return the completed form to the Manager CPC-M.

CPC-M will respond within 15 working days on undertakings submitted on or after April 1, 1994. It was as of this date that all family class sponsorship applications were centralized in CPC-M.

For undertakings signed before April 1, 1994, local CICs holding the original documents will assist CPC-M in verifying the information.

7.3 What is meant by "default of a transportation or ROLF loan?"

Technically, a loan is in default if there has been no payment for 30 days [see R46(1)]. However, CIC generally considers there is default only after 90 days unless it plans to refer the account to a private collection agency or set-off against income with Revenue Canada.

R47 also allows collection officers (designated as Immigration officers for this function) to defer repayment on the loan for up to two years for Convention refugees, and up to six months for non-refugees.

If approval is given to defer the repayment of the loan, the loan is not in default.

Sponsors making repayments may still be in default. If they fall into arrears without arranging deferral of payments and resume payments, the collections officer will want all arrears before considering the loan to be in good standing. It is the collections officer who determines whether or not the loan is in default.

Immigration Program Accounts Receivable (IPAR) should be viewed to verify if the sponsor has defaulted on a transportation loan. Or, call 1-800-667-7301 to query information on a loan account.

7.4 How to get out of default

Default is not cancelled simply because the validity of the undertaking has expired or sponsors resume their responsibilities without making arrangements for repayment.

Similarly, the sponsored applicant's death does not cancel default.

> ***Note:*** *If the sponsor dies, CIC or provinces will not seek compensation from the estate. The responsibility would however devolve to the co-signer, if applicable. Co-signers who do not assume the dead sponsor's obligations are in default.*

Sponsors are eligible to sponsor again only if social assistance authorities state sponsors have resumed their obligations and that they are satisfied with the arrangements for repayment.

7.5 Consequences of default

Sponsors and co-signers who default:

- Are barred from sponsoring anyone else, including their spouse or child
- Will be reminded to resume their obligations, by a letter, interview or both
- May be subject to Court action by provinces or the federal government for recovery of social assistance paid to their relative [A118(2)]
- If a court of competent jurisdiction finds the sponsor to be in default, all costs incurred, all fines, court costs and administration fee imposed on or assessed against the sponsor may be recovered as a debt due to Her Majesty [A118(3)]

> ***Note:*** *They are not barred from sponsoring or co-signing if they previously helped a sponsor meet settlement arrangements under the pre-April 1, 1997 practice of co-sponsorship and the sponsor defaulted.*

The bar on defaulting sponsors applies to all undertakings, not only those given after April 1, 1997. R5(2)(g) is equivalent to the former R6(1)(c)(ii) which barred sponsors who defaulted on an undertaking.

7.6 Assessing default at CPCs

Immigration officers review information on the sponsor's IMM 1344A - *Application to Sponsor.* Sponsors and co-signers must declare if they have defaulted on an undertaking which they previously gave or supported, or on an immigration loan under R45.

CPC staff will also review the *Previous Default* field in the CPS module of FOSS for information on previous defaults. CPC staff will also contact IPAR collections officers for information about unpaid transportation or ROLF loans.

Provincial social assistance authorities also provide information to CIC on sponsored immigrants receiving welfare. These reports identify sponsors and help determine who has defaulted on undertakings.

CPC staff verify directly with social assistance offices when information on the sponsorship application indicates the sponsor may have defaulted on a previous

undertaking, i.e. sponsors report social assistance as income, are unemployed or have a marginal salary.

The WIP event for *Not Met* applications is *R5(2)(g) - sponsor in default.*

R5(2)(g) is *Not Met* if the sponsors have either:

- Defaulted on a previous undertaking which they previously gave or co-signed
- Defaulted on a loan under R45

> ***Note:*** *Co-signers who have defaulted on a previous undertaking, cannot use their income to meet the LICO. Unless the sponsor was also the sponsor on the same previous undertaking, the sponsor is not automatically in default as well.*

7.7 Recording Default

When a social assistance agency reports a sponsor is not supporting a relative, CPC-M staff will:

- Determine if the undertaking is still valid
- Enter default information in the CPS module of FOSS

> ***Note:*** *If the sponsorship is not in the CPS module, e.g. in MISS, enter an NCB in FOSS (watch-for) to alert officers at the CPCs that a sponsor has defaulted.*

- Remind sponsors in writing, of their obligations, inform them they are not eligible to sponsor again unless arrangements are made to repay welfare payments, and warn them they may be liable to legal action for repayment

> ***Note:*** *CICs will send a follow-up letter to sponsors who do not respond to the letter, inviting them to an interview to discuss their obligations to their relatives.*

- Inform the social assistance office that the sponsor is in default

> ***Note:*** *The welfare office will determine whether or not to provide full or partial social assistance, or no social assistance (if the sponsor resumes his/her obligations). It may require the sponsored immigrant to sue the sponsor for support as a pre-requisite to receiving social assistance or ask the Manager CPC-M to assign the undertaking to the province to allow it to litigate against the sponsor for recovery of social assistance.*

If social assistance authorities confirm sponsors have resumed their obligations, CPC-M staff will delete the default information from the CPS module of FOSS.

7.8 Information sharing between CIC and social assistance offices or Human Resources Development Canada (HRDC)

Work is underway to develop a centralized data system for sharing default information between CIC and social assistance offices or Human Resources Development Canada. Until the details are worked out, CICs and CPCs should continue ad hoc arrangements for the sharing of information with their counterparts.

7.8.1 Information sharing with HRDC on applicants for the GIS

The GIS is a top-off to the OAS pension. Until 1996, sponsored immigrants from countries that had reciprocal arrangements with Canada, could apply for the GIS if they found themselves destitute.

Sponsored immigrants from these countries are no longer eligible for the GIS except in rare circumstances, e.g. their sponsor dies, is in prison, is convicted of abusing the sponsored immigrant. In all other cases, sponsors are obliged to care for their over 65-year-old parents, grandparents or spouses for 10 years (or less in Quebec and in a few undertakings given prior to April 1, 1997).

7.8.2 Procedures

HRDC officers fax CPCs details of GIS applicants whom they believe were sponsored as members of the family class, including Canadian citizens.

CPC staff check FOSS and provide HRDC with the immigrant category of the sponsored immigrant, the validity date of any undertaking, the sponsor's name and last known address.

8. NOT UNDER A REMOVAL ORDER

8.1 Who is subject to this bar?

Permanent residents cannot sponsor if they are under a removal order. The only exception to this bar is for people who were landed despite an unexecuted removal [R5(2)(c)].

This bar applies to all sponsors under a removal order, including those wishing to sponsor their spouse or children.

Co-signers under a removal order cannot contribute their income to help the sponsor meet the financial test [see R5(4)].

> ***Note:*** *If you receive an undertaking co-signed by a spouse under a removal order, calculate the income using the sponsor's income only. If the sponsor's income alone is insufficient, show the sponsorship as Not Met - insufficient income.*

8.2 What does "removal order" mean?

Removal orders include exclusion orders and deportation orders.

Stayed orders are removal orders. Therefore sponsors whose removal order has been stayed are barred from sponsoring.

8.3 How to assess this requirement

CPC staff will review information provided by the sponsor on the IMM 1344A *Application to Sponsor.* Permanent resident sponsors and co-signers must state if they are under a removal order. Officers will also verify in FOSS whether or not the sponsor is under a removal order.

Officers should rely on CPC verification that the sponsor is not under a removal order. If new information comes to light during processing, officers should ask the CPC to confirm the sponsor is not under a removal order.

The WIP event for *Not Met* applications is *R5(2)c) - under a removal order.*

9. NOT IN PRISON

9.1 Who is subject to this bar?

Permanent residents **and** Canadian citizens may not sponsor or co-sign if they are in jail [R5(2)(d)]. Sponsors being held in pre-trial holding or correctional facilities are unlikely to be able to support their relatives.

Sponsors in immigration detention centres are **not** ineligible to sponsor because of this bar. Instead, they may be ineligible because they are under a removal order (see section **8.** above) or because they have been charged with an offence (see section **10.** below).

This bar extends to persons wishing to sponsor a spouse or children.

If the co-signer is in prison, calculate the income requirement using the sponsor's income only.

Persons on parole, on probation or serving a suspended sentence are allowed to sponsor.

9.2 Assessing this factor at CPCs

The IMM 1344A *Application to Sponsor* requires sponsors and co-signers to state if they are in prison. CPC staff will also verify FOSS and request a Canadian Police Information Centre (CPIC) check where warranted.

CICs should ensure FOSS contains information about permanent residents in prison, even for relatively minor convictions, obtained from the police or during routine visits to the courts.

Officers should rely on the CPCs and CICs to verify sponsors are not in prison. If contrary information comes to light during processing, inform the CPC or CIC for confirmation.

The WIP event for *Not Met* applications is *R5(2)(d) - in prison*.

10. CHARGES LAID

10.1 Who is subject to postponement of sponsorship?

Permanent resident sponsors or co-signers who have been charged with a serious offence which could lead to their imprisonment will have their application to sponsor held in abeyance until the courts have made a final determination of the charges [R5(6)].

Similarly, visa officers cannot make a final determination on an application for permanent residence if they learn a permanent resident sponsor or co-signer has been charged with a serious offence [R6(3.4)].

The postponement extends to sponsors of a spouse or minor child.

The wording of the two regulations is almost identical. They are repeated so it is clear that processing of the sponsorship or the application for permanent residence may be held in abeyance if serious criminal charges are laid against a permanent resident sponsor or co-signer.

> ***Note:*** *Sponsorships by Canadian citizens charged with a serious criminal offence are not held in abeyance. However, should Canadian citizen sponsors be imprisoned before processing is finalized, the application for permanent residence will be refused. If a Canadian citizen co-signer is imprisoned, their income cannot be used to help the sponsor meet LICO, which may lead to a refusal because of insufficient income.*

Immigration officers will assess sponsorship requirements only when a decision is made on the charges. They will use the LICO in effect on that date. They will also ask visa officers to seek a reassessment of income before issuing a visa. Income requirements may no longer be met because of the amount of time that has passed since submission of the undertaking.

If the charges are dismissed, processing starts.

If the sponsor or co-signer is imprisoned, the sponsor or co-signer is barred from sponsoring or co-signing [see R5(2)(d)] and the application for permanent residence must be refused.

> ***Note:*** *Even if the sponsor or co-signer is not imprisoned, there may be grounds for an A27(1) report. Sponsorships where the sponsor or co-signer is the subject of an A27(1) report may also be held in abeyance (see section* **12.** *below).*

10.2 Serious charges only

Sponsorships will be held in abeyance under R5(6) or R6(3.4) if the sponsor or co-signer has been charged with an offence described in these regulations.

The regulations specify two types of serious offences, both of which could lead to imprisonment in a federal penitentiary.

The first type is an indictable offence, or an offence, other than an offence designated as a contravention under the *Contraventions Act*, for which the offender may be prosecuted by indictment or for which the offender is punishable on summary conviction, that may be punishable by way of indictment under any Act of Parliament by a maximum term of imprisonment of less than 10 years.

The second type of offence is an offence under any Act of Parliament, other than an offence designated as a contravention under the *Contraventions Act*, for which a term of imprisonment of five years or more may be imposed.

Charges for offences not specified in these regulations, notably offences not punishable by imprisonment, do not trigger postponement unless they result in an A27(1) report (see section **12.**below).

10.3 Procedures at CPCs and CICs

Permanent resident sponsors and co-signers are asked on their application to sponsor if they have been charged with a serious offence. The application guide discourages them from applying to sponsor if they have been charged.

When assessing sponsorship applications, CPC staff will verify FOSS for information that serious charges have been laid against permanent resident sponsors or co-signers.

> ***Note:*** *CICs should insert information on serious charges against permanent residents into FOSS.*

If such evidence exists, the application to sponsor will be referred to an inland CIC. The CIC will investigate the information. If the charges could lead to imprisonment or an A27(1) report, the sponsorship will be held in abeyance until the charges have been dealt with.

CICs are not to refer these sponsorships to a visa office until the charges are dismissed or a decision is made not to hold an inquiry.

The CIC must inform the sponsor that:

- The application will be held in abeyance until the charges have been dealt with.
- The application will be assessed under requirements in effect at that time.
- It is the sponsor's responsibility to inform the CIC if charges are dismissed.

After dealing with the referral, CICs must return the sponsorship forms to the CPC.

If the sponsor is imprisoned or becomes the subject of a removal order, CPC-M will refer the undertaking to the visa office with an explanatory note.

The visa office refuses the application for permanent residence for failure to meet R5(2)(d) - sponsor in prison, or R5(2)(c) - sponsor under a removal order.

If a visa office uncovers information which could lead to serious charges in Canada, it should contact CPC-M. Staff there will transfer the sponsorship to a CIC for investigation. The CIC should keep the visa office informed of developments.

11. NOT BANKRUPT

11.1 Who is subject to this bar?

Permanent residents and Canadian citizens cannot sponsor or co-sign if they are bankrupt [R5(2)(e)].

The bar extends to sponsors of a spouse or child.

If the co-signer is bankrupt, calculate the income requirement using the sponsor's income only.

11.2 Assessing bankrupt sponsors at CPCs

CPC staff will verify information provided on the IMM 1344A *Application to Sponsor.* Sponsors and co-signers must state whether or not they are bankrupt. Reports from provincial social assistance offices may also indicate sponsored immigrants are receiving welfare because their sponsor is bankrupt.

The WIP event for *Not Met* applications is *R5(2)(e) - bankrupt.*

Officers should rely on CPCs to verify sponsors and co-signers are not bankrupt. If contrary information comes to light during processing, ask the CPC to confirm it.

11.3 What does "undischarged bankrupt" mean?

All bankruptcies involve placing the property of the bankrupt in the hands of a trustee. The trustee works out an arrangement with creditors. Sometimes arrangements involve a proposal for repayment. The proposal can extend for a number of years.

A bankruptcy can be discharged before the time allowed for repayment elapses.

For first-time bankrupts, a discharge is automatic 9 months from the date of bankruptcy, unless a creditor protests.

In other cases bankrupts apply for discharge by a court. They may apply after 9 months or earlier. Courts can decide not to discharge, but public policy is to discharge as quickly as possible. Except for incorrigible bankrupts or fraud artists, the practice is to discharge *on conditions.* A discharge *on conditions* is not a discharge under R5(2)(e). Courts may also wait an extra 6 months to discharge, or apply a combination of delay and conditions.

Of all bankruptcies 93% are personal, i.e. non-corporate. Of these 80% are discharged automatically, i.e. after 9 months. Ten percent are opposed by creditors and may be discharged after 15 months. The majority of bankruptcies are discharged within 2 years.

12. SUBJECT TO AN A27(1) REPORT

12.1 Who is subject to postponement of sponsorships?

Permanent resident sponsors who, there are reasonable grounds to believe, are or will be the subject of an A27(1) report, will have their application to sponsor held in abeyance until a decision is made not to issue a direction to inquiry [R5(7)].

If co-signers are subjects of an A27(1) report, their income cannot be used to help sponsors meet the LICO unless a decision is made not to issue a direction to inquiry.

Similarly, visa officers cannot make a final determination on an application for permanent residence if they learn a permanent resident sponsor or co-signer could be the subject of an A27(1) report [R6(3.5)].

The postponement extends to sponsors of a spouse or child.

The wording of the two sections is almost identical. They are repeated so it is clear that an A27(1) report may result in postponement of processing at any time before the final decision on the application for permanent residence.

Immigration officers will assess sponsorship requirements only when the A27(1) report has been dealt with conclusively. They will use the LICO in effect on that date. They will also ask visa officers to seek a reassessment of income before issuing a visa. Income requirements may no longer be met because of the amount of time that has passed since submission of the undertaking.

12.1.1 Reasons for holding a sponsorship in abeyance

A few of the most common reasons for an A27(1) report are described here.

Some immigrants are landed subject to terms and conditions. It they do not comply with these terms and conditions they may be reportable. Allowable terms and conditions are prescribed in the *Immigration Regulations*, They include the requirement to marry within 90 days and report the marriage within 180 days [R23.1(2)], the requirement to start a business in Canada within two years [R23.1(1)], or the requirement to make an irrevocable investment [R23(1)(b) or (b.1)].

Immigrants convicted of a criminal offence (see the applicable section in A27(1)) are also reportable.

Anyone landed after improperly obtaining a visa or permanent residence through misrepresentation of a material fact may be reportable as well, e.g. failing to declare all dependants on the application for permanent residence or an immigrant visa.

12.1.2 Procedures at CPCs and CICs

Permanent resident sponsors and co-signers are asked on their application to sponsor if they are or may be the subject of an A27(1) report. When assessing sponsorship applications, CPC staff will verify FOSS for information that the sponsor or co-signer is or may be the subject of an A27(1) report.

If such evidence exists, the application to sponsor will be referred to an inland CIC. The CIC will investigate the information.

CICs are not to refer these sponsorships to a visa office even if a decision is made not to hold an inquiry.

The CIC must inform the sponsor:

- The application will be held in abeyance until a decision is made not to hold an inquiry
- The application will be assessed under requirements in effect at that time or, if an inquiry is held, after the adjudicator has made a decision

If the sponsor becomes the subject of a removal order, CPC-M will refer the undertaking to the visa office with an explanatory note.

The visa office refuses the application for permanent residence for failure to meet R5(2)(c) - sponsor under a removal order.

If a visa office uncovers information which could lead to an A27(1), it should contact CPC-M. Staff there will transfer the sponsorship to an inland CIC for investigation. The inland CIC should keep CPC-M and the visa office informed of developments on the A27(1) report and make every effort to have a decision on the report rendered as soon as possible.

After dealing with the referral, CICs must return the complete file to CPC-M.

13. SPONSORSHIP AGREEMENT

13.1 Who signs the sponsorship agreement?

The sponsor, co-signer where applicable, and principal applicant must be party to contractual obligations [R5(2)(h) and (i)].

The requirement extends to persons sponsoring their spouse. Both must sign the sponsorship agreement.

Co-signers sign because they assume the same responsibilities and obligations toward the immigrant as the sponsor. If the sponsors default, co-signers become fully responsible for the support of the immigrants and their dependants.

Applicants less than 19 years of age do not have to enter into an agreement with their sponsor unless they are the sponsor's spouse or fiancé(e).

The dependants of the principal applicant do not have to sign an agreement.

> ***Note:*** *Sponsored children over 19 with a mental or physical disability who qualify under part c) of the definition dependent son or daughter need not sign a sponsorship agreement. In order to qualify as dependent sons or daughters they must prove they are unable to support themselves due to a medical condition. To have them sign an agreement in which they promise to make efforts to support themselves would be contradictory to the regulations on dependent sons or daughters.*

13.2 What is the sponsorship agreement?

A sponsorship agreement is a written contract in which sponsors and co-signers, if applicable, and applicants make promises to each other. The sponsors promise to provide for applicants' and their accompanying dependants' essential needs for 10 years.

Essential needs mean food, shelter, clothing and other goods or services necessary for day-to-day living. Essential needs also include dental care, eye care and health care not provided by public health insurers.

Sponsors and co-signers also declare their financial obligations will not prevent them from providing for the applicant and dependants.

Applicants promise they will make reasonable efforts to provide for their essential needs and those of their dependants.

13.3 What is the purpose of the agreement?

The sponsorship agreement helps sponsors and co-signers focus on the obligations they assume when they sponsor or co-sign. They have an obligation not only to the Minister of Immigration (through the undertaking), but also toward their relatives (through the sponsorship agreement).

The contract may be used by provincial welfare authorities to deny or decrease welfare payments to family class immigrants, or to encourage sponsors or co-signers to resume their obligations by reminding them of the promises in the contract.

The agreement also makes it easier for immigrants to sue their sponsor or co-signer for support. Such a suit is sometimes a requirement for obtaining social assistance.

13.4 Procedures at CPCs

The sponsor must submit a completed sponsorship agreement (photo-copy or faxed copy) with the sponsorship application. CPC staff will follow-up with the sponsor if the agreement is not attached or if the sponsor, co-signer or applicant has not signed.

It is not necessary to use the agreement which is part of the kit. However, all agreements must contain the same provisions as R5(2)(h)(i), (ii) and (iii).

After signing the agreement, the sponsor, co-signer and applicant are bound by their obligations. They cannot withdraw the agreement unless the entire undertaking is withdrawn, and then only before an immigrant visa is issued.

Visa officers should consider CPC-M staff have seen the sponsor's copy unless they indicate R5(2)(h) is *Not Met* on the *WIP* transcript sent with the undertaking.

13.5 Amending the agreement

Sponsors and applicants may agree to add obligations to the agreement. They cannot subtract any of the promises of R5(2)(h).

When applicants add a dependant to their application for permanent resident, visa offices should have the applicant add the new dependant to their copy of the agreement and forward it to CPC-M. CPC-M then contacts the sponsor to determine if the income test is still met (when it is applicable). CPC-M also ensures the sponsor adds the new dependant to the undertaking and the sponsorship agreement.

The WIP event for *Not Met* applications is *R5(2)(h) - no agreement.*

13.6 Withdrawing the agreement

Sponsorship agreements cannot be withdrawn if immigrant visas have been issued or if A 9(1) has been waived (see section **2.6**.

14. QUEBEC SPONSORS

14.1 The undertaking

Subsection (a) of the definition of *undertaking* refers to Quebec sponsors. It states Quebec is responsible for the determination and application of financial criteria for sponsorship and the administration of sponsorship undertakings of sponsored immigrants who intend to reside in Quebec. The purpose of Quebec undertakings is to assist the family member and dependants in becoming successfully established in Canada.

14.1.1 Duration of undertakings

The Canada-Quebec Accord allows Quebec to determine the duration of its undertakings.

By regulation undertakings for spouses last 3 years. When they show proof of marriage, undertakings for fiancé(e)s are amended to 3 years as well.

Undertakings for children last until they reach the age of majority (18).

All other undertakings last 10 years.

14.2 Assessing sponsorships - general

The Quebec sponsor submits an IMM 1344A to the appropriate CPC and pays the processing fee.

Quebec sponsors do not complete the IMM 1344B, IMM 1283 or IMM 1344C.

The CPC determines eligibility to sponsor.

> ***Note:*** *The provincial income test is included in the federal sponsorship kit to allow Quebec sponsors to self-assess their financial situation before applying. They must pay a processing fee to the government of Quebec for processing of their undertaking.*

The CPC sends a copy of the IMM 1344A to the *Service aux garants et aux candidats à l'immigration*, MRCI, in Montreal.

The sponsor submits a *demande d'engagement* to MRCI.

MRCI verifies settlement arrangements, when applicable. [R6(3.2) and R6(3.3)].

MRCI informs the sponsor if the *demande d'engagement* is approved or refused. In approved cases, MRCI sends the sponsor two copies of the *engagement*.

One of these copies will bear the notation *Copie conforme - MRCI -#_____*. It will also bear an MRCI stamp and the ministerial decree number of the employee who signed the *engagement*.

The sponsor sends the copy bearing the notation, stamp and number to the sponsored applicant. The sponsored applicant attaches it to the application for an immigrant visa.

For applicants in Canada, the *Service aux garants et aux candidats à l'immigration* will send a signed copy of the *engagement* directly to CPC-V.

> ***Note:*** *The Service aux garants et aux candidats à l'immigration may ask regional offices to process some applications from sponsors. When this happens the regional office is completely responsible for the case. The list of the MRCI regional office follows the LICO table in the sponsorship kit.*

14.2.1 Sponsor does not meet federal requirements

If the sponsor does not meet federal criteria, the CPC forwards the IMM 1344A to both MRCI and the visa office with a note explaining which federal sponsorship criterion is

not met. If the sponsored person submits an application for an immigrant visa, the visa office refuses the case without waiting for MRCI's input.

14.2.2 Which federal requirements apply to Quebec sponsors?

Quebec sponsors are subject to the following federal sponsorship requirements:

- They must meet the definition of sponsor
- They cannot be under a removal order
- They cannot be in prison
- Their sponsorship is held in abeyance if serious charges have been laid against them
- Their sponsorship is held in abeyance if they are the subject of an A27(1) report

Quebec sponsors are not subject to the following federal sponsorship requirements (R5.1):

- Not be bankrupt
- Not be in default of a previous undertaking (see clarification in section **14.4**)
- Have a sponsorship agreement
- Meet the federal financial test

Quebec may however impose its own, similar requirements on Quebec sponsors before accepting their undertaking. Without an undertaking approved by MRCI, visa officers cannot issue immigrant visas to members of the family class destined to Quebec.

> ***Note:*** *Since the only role of the co-signer is to help the sponsor meet the financial test and since Quebec has its own financial test, the decision to have co-signers is the sole responsibility of MRCI.*

14.3 Assessing defaulting sponsors

Quebec sponsors in default of an undertaking given to the government of Quebec, are not barred under federal regulations from sponsoring again. R5(2)(g) does not apply to Quebec sponsors (see R5.1). However, Quebec Immigration will generally not approve an undertaking given to them by a sponsor who has defaulted on an undertaking previously given to the province.

> ***Note:*** *All evidence of default in Quebec or another province, whether indicated on FOSS or on the IMM 1344A should be referred with the IMM 1344A - Application to Sponsor to MRCI for evaluation.*

Persons who sponsored outside Quebec, e.g. in Ontario, and whose sponsored relatives later access Quebec social assistance, are not "in default" if they sponsor again while residing in Ontario (because Quebec social assistance is not in *Schedule VI*).

However, sponsors who previously sponsored while they were in Quebec and whose relatives later access Quebec social assistance are "in default" if they sponsor again in another province (because of the wording of R5(2)(g)). It bars sponsors who are in default of obligations assumed under *any other undertaking* the person has given. Since the definition of undertaking provides for undertakings given to the Government of Quebec, these undertakings qualify as *any other undertaking*.

> ***Note:*** *Discussions are underway with all provinces to find ways to better track sponsorship default in order to bar future sponsorships and recover social assistance paid to sponsored immigrants.*

14.4 Sponsor under a removal order

Permanent residents in Quebec cannot sponsor if they are under a removal order. Should CPC-M receive a sponsorship from a Quebec sponsor under a removal order, it will forward the sponsorship to the responsible visa office and to MRCI, with an explanatory note. Or, it may forward the sponsorship with a copy of its response to the sponsor's application. If the sponsored person submits an application for an immigrant visa, the visa office refuses the case without waiting for MRCI's input.

14.5 Sponsor in prison

Quebec sponsors may not sponsor if they are in prison. Should CPC-M receive a sponsorship from a Quebec sponsor in prison, it will forward the sponsorship to the responsible visa office and to MRCI, with an explanatory note. Or, it may forward the sponsorship with a copy of its response to the sponsor's application. If the sponsored person submits an application for an immigrant visa, the visa office refuses the case without waiting for MRCI's input.

14.6 Sponsor charged with a serious offence or is the subject of an A27(1) report

CPC staff will refer these sponsorships to a CIC in Quebec for follow-up. CICs are not to refer these sponsorships to MRCI or to a visa office until the charges are dismissed or a decision is made not to hold an inquiry.

The CIC must inform the sponsor that:

- The application will be held in abeyance until the charges have been dealt with or a decision of no inquiry is made on the A27(1) report.
- The application will be assessed under requirements in effect at that time.
- It is the sponsor's responsibility to alert the CIC if charges are dismissed.

If the sponsor is imprisoned or becomes the subject of a removal order, refer the undertaking to the visa office and MRCI with an explanatory note. Or, forward the sponsorship with a copy of its response to the sponsor's application.

If the sponsored person submits an application for an immigrant visa, the visa office refuses the case without waiting for MRCI's input.

14.7 Role of visa officer if applicant destined to Quebec

Visa officers cannot issue immigrant visas to applicants destined to Quebec unless MRCI is satisfied the sponsor can fulfill the undertaking [R6(3.2)]. As in other provinces, there is no financial test for persons sponsoring their spouse or dependent children who are unmarried, under 19 and without children of their own [R6(3.3)].

Since MRCI determines the ability of Quebec sponsors to meet the provincial income test, federal officers cannot re-calculate the sponsor's financial situation [R6(3.1)]. They should however bring negative information to the attention of the MRCI office that processed the application for the *engagement*. They should ask MRCI officials if the financial test is still met and wait for a response before finalizing the case.

Similarly, visa officers should take into consideration information provided by MRCI or other sources which indicates refusal of a spouse or child destined to Quebec is warranted under A19(1)(b).

15. FIANCÉ(E)S TERMS AND CONDITIONS

15.1 Fiancé(e)s must marry within 90 days of landing

Sponsored fiancé(e)s must marry their sponsor within 90 days of landing in Canada, and report the marriage within 180 days. The sponsor agrees to these conditions by signing the *Fiancé(e) Declaration* at Part E of the IMM 1344A. Applicants agree by signing Part 2 of the IMM 243 or the box entitled *Declaration of Fiancé(e) Applicant* on the IMM 8. The conditions are notated on the IMM *1000 Immigrant Visa and Record of Landing* and take effect when the fiancé(e) is landed.

Visa offices counsel fiancé(e)s about these conditions in a covering letter attached to their IMM 1000. The letter tells them to send clear copies of their marriage certificate, their record of landing, their sponsor's record of landing or proof of Canadian citizenship and a self-addressed envelope within 180 days of landing to:

Case Processing Centre
P.O. Box 6100, Station "A"
Terms and Conditions
Mississauga, Ontario
L5A 4H4.

15.2 Recording compliance with terms and conditions

CPC-M records compliance in FOSS.

It then sends a letter confirming compliance to the fiancé(e).

15.3 A27(1) report for non-compliance

Fiancé(e)s who do not marry within 90 days, or who do not show proof of marriage within 180 days, are subject to an A27(1)(b) report.

Files should be referred to an inland CIC for follow-up.

Sponsorships of fiancé(e)s who are subjects of an A27(1)(e) report will be held in abeyance until final disposition of the report.

APPENDIX A

FAMILY INFORMATION SHEET

(see section **1.3**)

(Side 1)

Both sides of this form are to be completed by the sponsor.

I do not have a spouse, son, daughter, father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew or niece who is a Canadian Citizen or permanent resident.

I also do not have a spouse, son, daughter, father, mother, grandfather, grandmother, brother, sister, niece or nephew that I can sponsor in the family class.

In order to provide evidence of the above I submit the following information:

My name is: _____

I wish to sponsor _____ who is my _____.
(name of proposed immigrant) *(relationship to sponsor)*

(If never married, do not complete the area below)

My spouse's name is: _____.

His/her date of birth is: _____

His/her address is:

_____

_____

_____

_____

_____

Date of divorce (if applicable) _____

Date of death (if applicable) _____

My spouse's status in Canada is: _____ (if a Canadian Citizen or Permanent Resident)

(complete the reverse side of this form)

(Side 2)

Relationship	Name (family name, given name)	Date and Place of birth/ death	Address	Status in Canada**
my son*				
my daughter*				
my father				
my mother				
grandfather (my father's father)				
grandmother (my father's mother)				
grandfather (my mother's father)				
grandmother (my mother's mother)				
my brother*				
my sister*				
my aunt*				
my uncle*				
my nephew*				
my niece*				

* if more than 1, list on a separate sheet.

** Indicate "C.C." if your relative is a Canadian Citizen.

Indicate "P.R." if your relative is or was ever a permanent resident of Canada.

APPENDIX B
ELIGIBILITY CHECK

SPONSOR:

ELIGIBLE	NOT ELIGIBLE	REG	
YES _____	NO _____	R5 (2)(a)	Meets the definition of a sponsor in R2(1): is a CC or PR, 19 or more and will continue to physically reside in Canada (includes Quebec sponsors); or
YES _____	NO _____	R5 (2)(a)	is a CC, residing abroad, 19 or more, sponsoring a spouse/child under 19, and will reside in Canada (includes Quebec sponsors)
YES _____	NO _____	R5 (2)(b)	has given an undertaking
YES _____	NO _____	R5 (2)(c)	not under a removal order (includes Quebec sponsors)
YES _____	NO _____	R5 (2)(d)	not in prison (includes Quebec sponsors)
YES _____	NO _____	R5 (2)(e)	not bankrupt
YES _____	NO _____	R5 (2)(f) R5 (3) R5(1)(b.1)	if applicable, meets LICO for income generated in Canada for 12 months preceeding date of undertaking (or, if visa officer requests reassessment, 12 months before immigrant meets requirements)
YES _____	NO _____	R5 (2)(g)	not in default on a previous undertaking
YES _____	NO _____	R5 (2)(g)	not in default on transportation or ROLF loan
YES _____	NO _____	R5 (2)(h)	has signed an agreement with FC applicant [if applicant 19 or older, or is spouse/fiance(e)]
YES _____	NO _____	R5 (6)	not charged with a serious offence (includes Quebec sponsors)
YES _____	NO _____	R5 (7)	not the subject of A27 (includes Quebec sponsors)

CO-SIGNER (if applicable):

ELIGIBLE	NOT ELIGIBLE	REG	
YES _____	NO _____	R5 (1)	is married or common-law spouse of sponsor (for at least one year)
YES _____	NO _____	R5 (4)	is 19, CC or PR, physically residing in Canada and will continue to reside in Canada
YES _____	NO _____	R5 (4)	not under a removal order
YES _____	NO _____	R5 (4)	not in prison
YES _____	NO _____	R5 (4)	not bankrupt
YES _____	NO _____	R5 (5)	income generated in Canada for 12 months preceeding date of undertaking
YES _____	NO _____	R5 (4)	not in default of a previous undertaking
YES _____	NO _____	R5 (4)	not in default on transportation or ROLF loan
YES _____	NO _____	R5 (6)	not charged with a serious offence
YES _____	NO _____	R5 (7)	not subject of an A27(1) report
YES _____	NO _____	R5 (2)(h)(iv)	has signed agreement with FC applicant (if applicant 19 or over)

APPENDIX C
WIP EVENTS

NEW STATUS - NOUVEAU STATUT	
MET	SATISFAIT
NOT MET*	NE SATISFAIT PAS*

NO.	MOTIFS	
1.	R5(2)(a) not a sponsor	R5(2)*a)* n'est pas un répondant
2.	R5(2)(b) no undertaking	R5(2)*b)* aucun engagement
3.	R5(2)(c) subject to removal	R5(2)*c)* visé par une mesure de renvoi
4.	R5(2)(d) in prison	R5(2)*d)* détenu dans une prison
5.	R5(2)(e) bankrupt	R5(2)*e)* est un failli
6.	R5(2)(f) insufficient income	R5(2)*f)* revenu insuffisant
7.	R5(2)(g) in default	R5(2)*g)* en défaut de paiement
8.	R5(2)(h) no agreement	R5(2)*h)* aucune entente
9.	Old regs. - see WIP Remarks (for selection if prior to new regs.)	Ancien règlement - voir Observations TEC (si la sélection a été faite selon l'ancien règlement)

APPENDIX D

SAMPLE E-MAIL NOTIFICATION OF APPROVAL OF SPONSORSHIP

Sponsor Family Name / Given Name: JOHN F. DOE

Sponsor Date of Landing in Canada: 25DEC1994

Sponsor Office of Issue: NEW DELHI

Sponsor Sex: M

Sponsor Date of Birth: 01JAN1965

Sponsor Country of Citizenship: INDIA

Sponsor Canadian Citizen? N

Sponsor Marital Status: MARRIED

Sponsor Home Address: 123 THE LARGE HOUSE BRAMPTON ONT CANADA L6L6L6

Sponsor Mailing Address:

Sponsor Home Telephone Number: 9051234567

Sponsor Fax Number: 905-1112222

Co-Signer's Family Name/Given Name: DOE, JANE

Co-Signer's Date of Landing: 25JUL1993

Co-Signer's Office of Issue: NEW DELHI

Co-Signer's Sex: F

Co-Signer's Date of Birth: 16NOV1957

Co-Signer's Country of Citizenship: INDIA

Co-Signer's Canadian Citizen: N

Co-Signer's Marital Status: MARRIED

Legal Representative's Firm Name: THE GOOD LAW OFFICE

Legal Representative's Contact Name: JIM JONES

Legal Representative's Mailing Address: 123 SKYDOME WAY TORONTO ONT M4M4M4

Legal Representative's Telephone Number: 4161234567

Legal Representative's Fax Number: 4169876543

PI Family Name / Given Name: SMITH, GEORGE

PI Relationship to Sponsor: FATHER

PI Sex: M

PI Date of Birth: 01MAR1941

PI Country of Birth: INDIA

PI Marital Status: MARRIED

PI Type of Dependant Child:

PI Mailing Address: THE LARGE APARTMENT IN THE COURTYARD NEW DELHI INDIA 122345

PI Home Telephone Number: 01123I54969850

PI Language Preference: E

CIC File Number: 9570-12345678

Point of Service Code: 9570

Settlement Reviewed: Y

SA's Available For: 5

Sponsor Required To Meet SA's For: 5

Length of Undertaking: 10

Total Cost Recovery Fees Collected: 1000.00

Total ROLF Collected: 1950.00

Receipt Date of IMM1344A: 23JAN1998

Date Signed: 19FEB1998

APPENDIX E

PROVINCIAL INFORMATION AND CONTACTS FOR ADOPTION CASES

1. NEWFOUNDLAND

The province requires that a homestudy be completed before it will issue a letter of no-objection. The provincial contact is:

Director of Child Welfare
Department of Social Services
P.O. Box 8700
St. John's, Newfoundland
A1B 4J6
Tel: (709) 729-2662
Fax: (709) 729-0583

2. NOVA SCOTIA

The province requires that a homestudy be completed before it will issue a letter of no-objection. The provincial contact is:

Coordinator of Adoption Services
Family and Children's Services
Department of Community Services
Province of Nova Scotia
P.O. Box 696
Halifax, Nova Scotia
B3J 2T7
Tel: (902) 424-3205
Fax: (902) 424-0708

3. PRINCE EDWARD ISLAND

The Province requires that a homestudy be completed and approved by the Director of Child Welfare before a letter of no-objection will be issued. The provincial contact is:

Provincial Adoption Consultant
Health and Community Services Agency
P.O. Box 2000
Charlottetown, PEI
C1A 7N8
Tel: (902) 368-6514
Fax: (902) 368-6136

4. NEW BRUNSWICK

The province requires that a homestudy be completed. If the result is positive, the provincial authority will issue a notarized letter of authorization stating that the homestudy meets provincial standards and regulations. A no-objection letter will be issued by the provincial authority upon the request of the Case Processing Centre once the applicant has complied with the above procedures. The provincial contact is:

Provincial Adoption Program Consultant
Department of Health and Community Services
P.O. Box 5100
Fredericton, New Brunswick
E3B 5G8
Tel: (506) 444-5970 or (506) 453-2950
Fax: (506) 453-2082

5. QUÉBEC

In Québec, the Secrétariat à l'adoption internationale (SAI) is the provincial government agency responsible for the adoption of children from outside the province.

To adopt a child from outside Québec, you have a number of options: you can proceed directly, you can go through the Secrétariat à l'adoption internationale, or you can go through an agency approved by the Minister of Health and Social Services.

Either staff from the Office of the Directeur de la protection de la jeunesse, a member of the Ordre des psychologues or a member of the Ordre professionnel des travailleurs sociaux conduct a psycho-social assessment of people wishing to adopt a child, depending on whether the adoption order is made overseas or in Québec.

Once this assessment has been done and the various forms have been filled out properly, the files of the prospective adoptive parents are sent overseas, either directly by them or through the agency chosen to act as an intermediary.

The country of origin offers a child either directly to the prospective adoptive parents or through the agency. Once the offer has been accepted, the various immigration and legal procedures to formalize the adoption are carried out, in accordance with the particular country's requirements.

The Chambre de la jeunesse of the Cour du Québec is asked to make an adoption order or an order recognizing the adoption order from the child's country of origin.

Afterwards, the adoptive parents may apply for Canadian citizenship on behalf of the child, so that he or she can acquire the same status and the same rights as any child born in Québec.

For additional information, please contact the SAI at the address below:

Secrétariat à l'adoption internationale
Ministère de la Santé et des Services sociaux
201, boul. Crémazie Est, R.C. 01
Montréal (Québec)
H2M 1L2
Tel: (514) 873-5226 or 1-800-561-0246
Fax: (514) 873-1709

6. ONTARIO

In the province of Ontario, the Ministry of Community and Social Services is the provincial authority which concerns itself with adoption cases. When an adoption is completed abroad, Ontario does not require a homestudy in order to issue a letter of "no involvement." However, where it is known that a homestudy is required by the adoption authority abroad, Ontario will not issue a letter of no-involvement without the homestudy. If an adoption is to be finalized in Ontario, a no-objection letter will be issued by the Ministry at the request of the CPC upon receipt of a satisfactory homestudy and, where applicable, documentation regarding the proposed child. The provincial contact is:

Adoption Unit, Central Services
Ministry of Community and Social Services
Management Support Branch
2 Bloor Street West
24th Floor
Toronto, Ontario
M7A 1E9
Tel: (416) 327-4730
Fax: (416) 327-0573 fax

7. MANITOBA

Adoptions Completed in Manitoba

- Manitoba requires:

  a) verification that the child is legally free for adoption; and

b) verification that the agency in the child's country of origin is licenced for adoption

- Where an adoption complies with Manitoba legislation, and an application is made to sponsor a child into Canada for the purposes of adoption, a letter of no-objection will be issued.
- If the sponsorship application is for an unnamed child, the letter of no-objection will not be issued until the particulars of the child are known.

Adoptions Completed in a Foreign Jurisdiction

- If an adoption homestudy is required by the child's country of origin, the applicants will be referred to a child and family services agency.
- Some countries may accept homestudies completed by private practitioners (Private practitioners are not currently mandated to provide adoption services in the province of Manitoba). Some countries may not require an adoption homestudy in the adoption of relatives.
- Where an adoption homestudy has been completed by a child and family services agency, a letter of no-objection will be issued.
- Where applications are not known to a mandated agency, a letter of no-involvement will be issued.
- If the sponsorship application is for an unnamed child, the letter of no-objection / no-involvement will not be issued until the particulars of the child are known.

Applicants who reside in rural Manitoba should contact their regional child and family services agency to inquire about international adoption. Applicants who reside in Winnipeg should contact:

Provincial Coordinator
Adoption and Peri-Natal
Suite 201 - 114 Garry Street
Winnipeg, Manitoba
R3C 4V5
Tel: (204) 945-6962
Fax: (204) 945-6717

8. SASKATCHEWAN

A no-objection letter will be issued by the province upon completion and approval of a homestudy. The provincial contact is:

Adoption Consultant
Adoption Services
Saskatchewan Social Services
1920 Broad Street
Regina, Saskatchewan
S4P 3V6
Tel: (306) 787-5698
Fax: (306) 787-0925

9. ALBERTA

The province of Alberta will issue a letter of no-objection for ward international adoptions, as soon as a child is proposed and accepted by the adoptive family. Letters of no-involvement are issued for privately arranged international adoptions. The child's translated adoption order is required prior to issuing the letter. The provincial contact is:

Program Planner, Adoption Services
Alberta Social Services
9th Floor, Seventh Street Plaza
10030 - 107 Street
Edmonton, Alberta
T5J 3E4
Tel: (403) 422-5641
Fax: (403) 427-2048

10. BRITISH COLUMBIA

Adoptions completed outside Canada

The following procedures apply when prospective adoptive parents (applicants) intend to adopt a child according to the adoption laws of a country that has not ratified the Hague Convention on Intercountry Adoption:

- Applicants have a valid homestudy completed;
- Applicants identify the country and child/children to be adopted and determine all adoption requirements of that country;
- Applicants submit their sponsorship application to the CPC;
- The CPC requests that the Adoption Division of the Ministry provide a letter of no-objection;
- Adoption Division requests the applicants to submit their homestudy, consent for a prior contact check and the child's background information (see the address below);
- The Ministry will issue the no-objection letter if the homestudy which approves the applicants is consistent with the child proposed for intercountry adoption; the Prior Contact Check indicates that there are no concerns regarding the applicants ability to care for a child; information regarding the child has been received; and where required, receipt of verification that the adoption can be completed in the other jurisdiction and copies of consents and documentation regarding custody and guardianship. A copy of the letter will be sent to the applicants at the time that it is forwarded to Canada Immigration.

For adoption of a relative, the Ministry does not apply the same requirements as stated above. If the adoption has not yet been completed, Adoption Division will request the consent of the applicants and will then conduct a prior contact check before issuing the letter of no-objection. If the adoption has been completed, Adoption Division requires a copy of the foreign adoption order before a letter of no-objection can be issued.

Adoptions completed in British Columbia

The *Adoption Act* requires prospective adoptive parents to obtain the approval of the Ministry or an adoption agency BEFORE bringing a child, who resides in a country that has not ratified the Hague Convention, into the province, to be adopted under the laws of British Columbia. This requirement does not apply when the child to be adopted is related to the prospective adoptive parents or when a prospective adoptive parent will become an adoptive parent jointly with the child's birth parent.

- The applicants notify the Ministry or an agency in writing, of their intention to adopt.
- PRIOR to the Ministry or agency granting approval for the child to be brought to British Columbia to be adopted, the following must be confirmed in writing: the birth parents have been provided with information about adoption and the alternatives to adoption, and they have been interviewed regarding the adoption plan; the prospective adoptive parents have received information about the medical and social history of the child and the child's biological family; the applicants have a valid homestudy and the necessary consents to the adoption have been obtained;
- In addition, for the purpose of issuing the letter of no objection, the Ministry requires that a Prior Contact Check be completed upon receipt of the request for approval and that it indicate that there are no concerns regarding the applicants' ability to care for a child; that the applicants have made reasonable efforts to give notice of the proposed adoption to anyone named by the birth mother as the child's birth father,if his consent is not required under the provincial Adoption Act, and anyone registered on the BC Birth Father's Registry.
- Applicants apply to the CPC to sponsor the identified child to come to Canada for adoption here;
- The CPC requests that the Adoption Division of the Ministry provide a letter of no-objection. Upon receiving notification that the applicants have obtained authorization to bring the child to British Columbia and the additional requirements have been met, Adoption Division will forward a letter of no-objection to the CPC. A copy of that letter will be sent to the applicants.

- Within 14 days of the child's arrival in British Columbia the applicants are to provide a written notification of the placement to the Ministry or an adoption agency.

The provincial contact is:

Ministry for Children and Families
Adoption Division
Parliament Buildings
Victoria, BC
V8V 1X4
Tel: (250) 387-3660
Fax: (250) 356-1864

11. NORTHWEST TERRITORIES

A no-objection letter will be issued by the territory upon completion of a homestudy. The territorial contact is:

Coordinator, Child Protection and Adoption
Department of Health and Social Services
Box 1320
Yellowknife, Northwest Territories
X1A 2L9
Tel: (403) 873-7943
Fax: (403) 873-0444

12. YUKON

A no-objection letter will be issued by the territory upon completion of a homestudy by the Department of Health and Social Services, Family and Children's Services Branch. The territorial contact is:

Supervisor
Placement and Support Services
Department of Health and Social Services
Box 2703 (H-10)
Whitehorse, Yukon
Y1A 2C6
Tel: (867) 667-3002
Fax: (867) 668-4613

APPENDIX F
LETTERS OF NO OBJECTION FOR SPONSORED ORPHANS (FC 5)-PROVINCIAL CONTACTS

British Columbia

Director of Child Protection
Ministry for Children and Families
Parliment Buildings
Victoria, BC V8V 1X4
phone: (250) 387-3660
fax: (250) 356-1864

Newfoundland

Director of Child Welfare
Child Welfare and Community Corrections
Department of Social Services
P.O. Box 8700
St. John's, NF A1B 4J6
phone: (709) 729-2480
fax: (709) 729-0583

Nova Scotia

Director of Child Welfare
5182 Prince Street
PO Box 696
Halifax, NS B3J 2T7
phone: (902) 424-5653
fax: (902) 424-0708

Prince Edward Island

Director of Child Welfare
Department of Health and Social Services
P.O. Box 2000
Charlottetown, PEI C1A 7N8
phone: (902) 368-5614
fax: (902) 368-6136

Yukon Territory

Director, Family and Children's Services
Box 2703
Whitehorse, YT Y1A 2C6
phone: (867) 667-5045
fax: (867) 393-6204

New Brunswick

Program Consultant for Child Protection
Dept. of Health and Community Services
P.O. Box / C.P. 5100
Fredericton, NB E3B 5G8
phone: (506) 444-5960
fax: (506) 453-2082

Northwest Territories

Superintendent of Child Welfare
Department of Health and Social Services
Government of Northwest Territories
Box 1320
Yellowknife, NT X1A 2L9
phone: (403) 920-6255
fax: (403) 873-0444

Ontario

Coordinator of Private and International Adoptions
Ministry of Community and Social Services
2 Bloor Street West, 24th floor
Toronto, ON M7A 3EZ
phone: (416) 327-4736
fax: (416) 327-0573

Saskatchewan

Senior Program Consultant
Child Protection
12th floor, 1920 Broad Street
Regina, SK S4P 3V6
phone: (306) 787-3682
fax: (306) 787-0925

APPENDIX G
LIST OF COUNTRIES THAT HAVE IMPLEMENTED THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION
(AS OF APRIL 24, 1998)

1. **COUNTRIES:**

Andorra (implementation date: May 1, 1997)

Burkina Faso

Canada (only in the provinces which have legislation in place to implement the Convention)*

Costa Rica

Cyprus

Denmark (implementation date: November 1, 1997)

Ecuador

Finland (implementation date: July 1, 1997)

Mexico

Moldova (implementation date: August 1, 1998)

Norway (implementation date: January 1, 1998)

Peru

Philippines

Poland

Romania

Spain

Sri Lanka

Sweden (implementation date: September 1, 1997)

Venezuela (implementation date: May 1, 1997)

2. ***PROVINCES AND TERRITORIES IN CANADA:**

Alberta (implementation date: November 1, 1997)

British Columbia

Manitoba

New Brunswick

Prince Edward Island

Saskatchewan

Yukon (implementation date: August 1, 1998)

APPENDIX H
LIST OF CENTRAL AUTHORITIES DESIGNATED IN CANADA UNDER THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION

BRITISH COLUMBIA

Director of Adoption
Contact: Jeannette Carlson
Ministry for Children and Families
Parliament Buildings
Victoria, BC
V4V 1X4
Tel: (250) 387-3660
Fax: (250) 356-1864

ALBERTA

Minister of Family and Social Services
Contact: Anne Scully
Program Planner, Adoption Services
Alberta Family and Social Services
9th Floor, Seventh Street Plaza
10030 - 107 Street
Edmonton (Alberta)
T5J 3E4
Tel: (403) 422-5641
Fax: (403) 427-2048

MANITOBA

Director of Child and Family Services
Contact: Donna Dickson
Provincial Coordinator, Adoption and Peri-Natal
Child Welfare and Family Support
Department of Family Services
Suite 201 - 114 Garry Street
Winnipeg, MB
R3C 4V5
Tel: (204) 945-1651
Fax: (204) 945-6717

SASKATCHEWAN

Minister of Social Services
Contact: Lynn Allan
Adoption Program Consultant
Saskatchewan Social Services
12th Floor
1920 Broad Street
Regina, Saskatchewan
S4P 3V6
Tel: (306) 787-5698
Fax: (306) 787-0925

NEW BRUNSWICK

Minister of Health and Community Services
Contact: Joan Mix
Provincial Adoption Consultant
Department of Health and Community Services
P.O. Box 5100
520 King Street
Fredericton, New Brunswick
E3B 5G8
Tel: (506) 444-5970
Fax: (506) 453-2950

FEDERAL GOVERNMENT

Minister of Human Resources Development
Contact: Lorraine Fernando
National Adoption Desk
5th Floor, Phase IV, Place du Portage
140 Promenade du Portage
Hull, Québec
K1A 0J9
Tel: (613) 953-0909
Fax: (613) 953-1115

PRINCE EDWARD ISLAND

Director of Child Welfare
Contact: Virginia MacEachern
Provincial Adoption Consultant
Department of Health and Social Services
P.O. Box 2000
Charlottetown, P.E.I.
C1A 7N8
Tel: (902) 368-6514
Fax: (902) 368-6136

YUKON

Director of Family and Children's Services
Contact: Maxine Kehoe
Placement and Support Service
Department of Health and Social Services
Box 2703 (H-10)
Whitehorse, Yukon
Y1A 2C6
Tel. (867) 667-3002
Fax: (867) 393-6204

APPENDIX I

SAMPLE OF LETTER TO SEND TO THE PROVINCIAL CENTRAL AUTHORITY

Provincial Central Authority
Address

Dear Sir, Madam:

Subject: Child's name, date of birth, country of origin, file number
Prospective adoptive parents' names

This refers to the application for permanent residence in Canada of «child's name» that «prospective parents' names» intend to adopt.

As agreed with your Ministry with respect to the processing of an adoption case governed by the Hague Convention on Intercountry Adoption, please be informed that «child's name» now meets the requirements of the Immigration Act and Regulations. We invite you to contact the Central Authority in the child's country of origin and the prospective adoptive parents to initiate the legal procedures for adoption/custody of the child. An immigrant visa will be issued to the child when we receive the travel document and the adoption order, if the child is adopted in the country of origin, or a legal document stating that the prospective adoptive parents have legal custody of the child, if the adoption will take place in your province.

Please be assured that the permanent residence application of «child's name» will receive priority processing.

Yours sincerely,

c.c. Sponsor

APPENDIX J

MAXIMUM AGE FOR PROVINCIAL CHILD WELFARE AUTHORITY'S INVOLVEMENT IN PLACEMENT OF A CHILD

Province	Age*
Alberta	18
British Columbia	18
Manitoba	18
New Brunswick	16 (19 if disabled)
Newfoundland	16
Nortwest Territories	19
Nova Scotia	16
Ontario	16
Prince Edward Island	18
Québec	18
Saskatchewan	16
Yukon	18

***Note:** once the child has reached this birthday the province will no longer get involved in child's placement*

APPENDIX K

PROVINCIAL REQUEST FOR DELEGATION UNDER A118(1)

PROVINCIAL REQUEST FOR DELEGATION UNDER A118(1) **send by fax to CPC Mississauga at (905) 803-7392**
Date *(Day/Month/Year)* FROM:
Name (First Name(s) and Family Name)
Position
(Area Code) and Phone Number
Fax Number
Name of Provincial Department concerned

INFORMATION ON SPONSOR
Name (First Name(s) and Family Name)
Date of Birth *(Day/Month/Year)*
Date Undertaking Signed *(Day/Month/Year)*
Length of Sponsorship
INFORMATION ON SPONSORED FAMILY CLASS MEMBER
Name of Sponsored Family Class Member (Immigrant)
Name(s) of Dependents and Family Relationship (Spouse/Child)
1.
2.
3.
Date of Their Arrival/Landing in Canada *(Day/Month/Year)*
In receipt of public assistance? Yes No Copy of Landing Document enclosed? Yes No Copy of Undertaking enclosed? Yes No
Other Information

CPC MISSISAUGA
Date Request Received *(Day/Month/Year)*
Receipt Number
Sponsor ID Number
Sponsor CPC/CIC File Number
Above information on Sponsor confirmed? Yes No Above information on Sponsored Relative confirmed? Yes No
Date Signed/Approved *(Day/Month/Year)*
Date delegation sent to Province (Day/Month/Year) Other Information:

IMMIGRATION

Canada

Chapter IP 3
Processing Refugee Applications for Landing



Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

Processing Refugee Applications for Landing

1. INTRODUCTION **1**
1.1 What this chapter is about 1
1.2 Policy intent 1

2. THE APPLICATION **2**
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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes processing of inland applications for permanent residence made by Convention refugees. It describes receiving applications for landing, making a decision regarding eligibility to apply for landing, processing the application, and landing those who qualify. The procedures to follow when it has been determined that a person is ineligible to apply or does not qualify for landing are described. The process through which persons are determined to be Convention refugees is not discussed. For information on that subject, see EC 5.

1.2 Policy intent

In granting permanent residence to Convention refugees, Canada's policy is to further the following objective:

- to fulfil Canada's international legal obligations with respect to refugees and to uphold it's humanitarian tradition with respect to the displaced and the persecuted.

2. THE APPLICATION

2.1 How clients submit an application

A Convention Refugee Application Kit for Permanent Resident Status (IMM 5202), a counselling letter and the notice of positive determination are given by the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB) to a person who is determined to be a Convention refugee.

Contained in the Application Kit is the guidebook "Applying for landing in Canada: A Guide for Convention Refugees" which answers questions an applicant is likely to ask.

Once the Convention Refugee completes the application (IMM 5202), he/she sends it to the Case Processing Centre (CPC) to be processed.

2.2 Date of the application

An application is considered to be made on the day it is received at the CP including the relevant cost recovery fees.

(Please also refer to sections 3.1 "Cost Recovery fees" and 4.1 "Calculation of the 60–day period".)

2.3 Screening the application form for completeness

Applications and the supporting documentation must be reviewed to verify:

a) Proper completion of the application (IMM 5202). Also ensure the applicant has signed the application and if any dependants in Canada are over 18, they have completed a separate IMM 5202.

b) Ensure the applicant has enclosed the following documentation:

   i) 2 passport–sized photographs of each family member in Canada (in addition to the photographs that accompany the application);

   ii) a photocopy of the applicant's identity document, and

   iii) a photocopy of the letter from the IRB indicating the applicant is a refugee.

c) Proof the applicant is a Convention refugee

   The Convention Refugee Determination Division (CRDD) gives written notice of its decision to the refugee claimant and the Minister. [A69.1(9)] The applicant also provides a photocopy of the Board's decision at the time an application is made. Field Operations Support System (FOSS) should be checked to verify that the applicant has been determined to be a refugee. This information is found in the Refugee Monitoring module under the CRDD results screen. If FOSS does not indicate the person has been found to be a refugee, the responsible IRB office should be contacted to verify the status of the claim prior to landing.

d) The applicable cost recovery fee has been submitted.

2.4 What to do if the application is incomplete

If the application does not include the required documents or is unsigned, enter in FOSS the date application was made and the reason for the return. Return the entire package back to the client with a letter

explaining the reason for the return. Do not return the application if the only reason for return is the lack of a letter from the IRB, unless refugee status cannot be determined in FOSS. If the client has neglected to complete a portion of the application, (ie: addresses for the past ten years), the officer at the CPC should try to obtain the information by telephone.

2.5 Tracking of the application

The Field Operations Support System (FOSS) tracks processing of applications for permanent residence made by Convention Refugees through the Case Processing Support (CPS) module.

Applications made by refugees must be entered in the CPS module when they arrive at the CPC.

The "approved–in–principle" field should indicate the case has or has not been provisionally approved at the time the eligibility decision has been made per section 4.1 below. "Y" should be entered in the "proof of identity" field if a satisfactory document has been submitted and "N" should be entered if one has not been provided. This may be changed to a "Y" later should the applicant provide a document.

When the requirements listed in section 6.2 below have been met, the results and the date received should be entered into the CPS module.

Once all requirements have been met, the landing information will be entered into the CPS module by officers at the CPC. The office of issue will be entered as the closest CIC to where the client lives.

The CIC will, according to local procedure, print landing documents on a regular basis. The CIC will send a call–in notice or letter to the client advising of the time to attend for landing.

3. THE FEES

Once all requirements have been met, the landing information will be entered into the CPS module by officers at the CPC. The office of issue will be entered as the closest CIC to where the client lives.

3.1 Cost recovery fees

Convention refugees and their dependants are subject to a cost recovery fee when applying for permanent residence in Canada. Please refer to IR 5. No exemptions have been identified.

If an application is not accompanied by the cost recovery fee, return the kit to the applicant with a letter requesting payment.

3.2 Right of Landing fee

Effective February 28, 1995, a Right of Landing Fee of $975.00, which is a fee for receiving the privilege of permanent residence in Canada, is applicable to any person who is at least 19 years of age and who applies for permanent residence in Canada, including Convention refugees.

In cases where an applicant does not have the funds to pay, he/she may apply for a loan. Loan application kits are available at all telecentres, Canada Immigration Centres and Info Centres. Loans are approved only for the full amount of the Right of Landing Fee and are granted on the basis of both demonstrated need and demonstrated ability to repay.

All applications received without the Right of Landing fee or evidence of an approved loan included will be returned to the applicant with a letter of explanation.

3.3 Forms of payment

Postal or money orders, traveller's cheques, personal and certified cheques and Visa and Mastercard are acceptable forms of payment. Certified cheques, money orders, and traveller's cheques are to be made payable to the Receiver General for Canada.

4. ELIGIBILITY

4.1 Determining eligibility of the principal applicant

In order to be eligible to apply for landing, the applicant **must**:

a) have been determined to be a Convention Refugee by the Immigration Refugee Board (IRB);

b) **not** be:

i) a permanent resident of Canada;

ii) a person who has been recognized by any country, other than Canada, as a Convention refugee and who, if removed from Canada, would be allowed to return to that country;

iii) a person who is a national or citizen of a country other than the the country he/she is claiming persecution against; or

iv) a person who has permanently resided in a country, other than the country he/she is claiming persecution against, and who, if removed from Canada, would be allowed to return to that country. [A46.04(1)]

c) apply within 60 days

Calculation of the 60–day period

In order to be eligible, all applicants are required to apply for permanent residence within 60 days after they are finally determined to be Convention refugees. [A46.04(1), R40]

In actual fact, a person who is given a favourable decision by the Immigration Refugee Board will have 7 days + 60 days to submit an application for permanent residence.

The 7 days is pursuant to Rule 30 of the Rules governing the activities of, and the practice and procedure in, the CRDD of the IRB, whereby the decision shall be considered to be effected on the date that is seven days after the date of mailing.

In cases where an original application was received within 67 days, but was returned to the applicant, he/she must be informed that if the kit is not returned within 90 days, he/she will not be considered for landing as a Convention refugee.

Applicants who are unable to pay the Right of Landing Fee and apply for a loan within 60 days of receiving the IRB determination letter will be considered to have "locked in" their intent to apply for permanent residence, provided they submit their application for permanant residence within 45 days following the decision on their loan application. In these cases, the application will be considered to have been filed within the prescribed period of time.

4.2 What to do if a Convention refugee is ineligible to apply.

The procedure to follow when it has been determined that an applicant is ineligible to apply for landing depends on the reason for ineligibility, but in all cases, except as outlined in a) below, the CPC should send the kit to the

applicable CIC for refusal. Information regarding the cost recovery fee should be included, so that a refund can be generated if it is determined that the client is ineligible.

a) If an applicant has not been determined to be a refugee, the kit and fee should be returned to the client with a letter of explanation.

b) If an applicant is described in A46.04(1)(c) and (d) as listed in section 4.1 b) above, the CIC will determine whether an application should be made to have the person's refugee status vacated. For further information see manual chapter EC 5.

c) Convention refugees who fail to apply within the 60–day period cannot be landed under A46.04(3). The client should be advised that he/she may make an application for landing under R2.1 if he/she so chooses. The client should also be advised that Ministerial exemptions under R2.1 are considered on a case by case basis to determine if there are humanitarian and compassionate grounds why the applicant should be granted landing. The fact that a refugee failed to apply within the prescribed period of time does not affect his/her refugee status.

In all cases of refusal, the applicant must be advised in writing of the decision. [A46.04(6)]

Where an applicant is ineligible to apply, the cost recovery fee should be refunded by the applicable CIC.

4.3 Eligibility of family members

Once it is determined that a Convention refugee is eligible to apply for permanent residence, his or her spouse and dependent children **in Canada and abroad** are also eligible provided that they meet the Regulation 2(1) definition of "dependant". [A46.04(1)]

Refugees will be informed that their dependants must meet statutory requirements in a general information letter sent by the CPC.

Although Convention refugees do not have to seek landing on behalf of all of their dependants, they **must** provide details of **all** dependants on their application for landing.

The Convention refugee **may choose** which of their dependants will be included for landing as part of their application. Dependants may be added to the application **if done so within the prescribed period** of time as outlined in section 4.1 c) above. If dependants are included who cannot be located in order to be examined by the visa office, this will delay the landing of the principal applicant. A Convention refugee cannot be landed until the dependants for whom landing is sought meet all the requirements of A46.04(3).

4.4 Removal of a dependant from the application

If Convention refugees wish to remove a dependant from their application, they may do so at any time up to the point of visa issuance. Because permanent separation may result they must be asked to sign a statutory declaration acknowledging this possibility. This may occur if the dependant cannot be located and therefore cannot be examined.

If an applicant completes a statutory declaration to remove a dependant from his/her application, the CPC will enter remarks on the IMM 1000 to indicate the name and date of birth of the withdrawn dependant and the fact that he or she was not included in the application or examined.

Once Convention refugees become landed, they may apply to sponsor their dependants who were not included in their application for landing provided they still meet the definition of dependant (R2.1).

4.5 Screening the application for eligibility

The application (IMM 5202) should be screened for the following:

a) Eligibility of the principal applicant

Questions 1 to 4 in Area "L" of the IMM 5202 pertain to the applicants eligibility to apply. Review the answers to these questions to determine if the applicant meets the eligibility criteria outlined in section 4.1 above. [A46.04(1)]

If the applicant has not been determined to be a Convention refugee or answers yes to any of the questions from 1 to 4 in Area "L"; the applicant is not eligible to apply for permanent residence.

b) Eligibility of family members to apply (per section 4.3 above)

The applicant must provide details of **all** dependants in Canada or outside Canada, on their application for landing.

Areas "B" and "C" on the IMM 5202 provides information on family members. Ensure that the persons included in the application meet the regulation 2(1) definition of "dependant". That is, they are the "spouse", "dependent son" or "dependent daughter" of the principal applicant. (Take note of the relationship to applicant and age of dependant.)

4.6 Positive decisions regarding eligibility

Once a Convention refugee is considered eligible to apply for permanent residence, the client should be sent a letter advising that the application has been "Approved–in–Principle". This letter will also be used to request any further information required to process the case (ie: Identity documents, supplementary forms for background checks, medical information etc.).

If the applicant lives in Quebec, a copy of the IMM 5202 and a covering letter must be sent to the Ministère des Affaires internationales, de l'Immigration et des Communautés culturelles (MAIICC).

5. ISSUANCE OF INTERIM AUTHORIZATIONS, VISITOR RECORDS AND MINISTER'S PERMITS

5.1 Student and employment authorizations, visitor records

Refugees may apply for these authorizations for themselves and their family members in Canada by completing box 14 in area "A" and box 6 in area "B" on IMM 5202. The requested authorizations should be issued providing all other requirements are met. Any authorization that is issued should be valid for a period of one year.

The case type used when issuing these documents should be "under examination".

For further information on issuing these authorizations, refer to manual chapters IP 6, IS 15 and IP 8.

5.2 Minister's permits

In some cases a Convention refugee who is eligible to apply for landing may be a permit holder. If this is the case, the applicant should apply for an extension to his/her Minister's Permit. The extension should be given for a period of one year. For further information on issuing Minister's permits, refer to manual chapter IS 10.

6. ADMISSIBILITY

6.1 Policy intent

Prior to granting permanent residence to any person, it is necessary to be reasonably sure that certain objectives are furthered. These are:

- the maintenance and protection of the health, safety and good order of Canadian society [A3(i)] and
- the promotion of international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity [A3(j)].

The requirement that all persons undergo medical and security clearances prior to landing is one way these objectives are met.

The policy intent, with respect to those determined to be refugees is that they, and their dependants included in the application are admissible regardless of a medical condition.

6.2 Requirements to be met before landing a Convention refugee and dependants

a) Background Checks

Convention refugees shall not be landed **if they**, or **any of their dependants for whom landing is sought**, are inadmissible under A19(1)(c.1), (c.2), (d), (e), (f), (g), (j), (k), or (l). In addition, the Convention refugee and dependants may not be landed if any of these persons have been convicted of an offence under any Act of Parliament for which a term of imprisonment of more than six months **has been** imposed **or** five years or more **may be** imposed.

Screening for inadmissibility on criminal grounds is done by the Royal Canadian Mounted Police. Security clearances are also performed.

Initiate both types of clearances by completing Form IMM 703, Request for Screening Action. Forward to the appropriate office for security screening, a copy of the application form (IMM 5202) and pages 1 and 2 of the completed IMM 703. Forward to the RCMP a photocopy of the application form (IMM 5202) and pages 3 and 4 of the completed IMM 703. In some cases, additional forms must be submitted along with the IMM 703. Background checks are done for all applicants and their dependants from ages 18 to 60 inclusive. Complete instructions for the submission of the IMM 703 can be found in the IC Manual.

Once these agencies have completed the screenings, the results, upon which an applicant's admissibility can be then determined, are sent to the originating office. Check the copies of the IMM 703 returned to the CPC to see if either agency has indicated the applicant may be inadmissible for landing.

b) Medical completed

Refugee claimants are required to undergo a medical examination at the time they claim refugee status [A11(1.1)]. Their dependants are also required to undergo a medical examination.

The medical examination is not for the purpose of declaring a recognized refugee and dependants to be medically inadmissible; rather, the examination takes place for the purpose of identifying medical conditions so that treatment can occur. Convention refugees and their dependants in Canada and abroad may be landed even if they do not meet normal medical requirements.

Verify in FOSS whether applicants and dependants in Canada have completed a medical examination. If it is indicated that a medical examination has not been completed, send the applicant medical forms (IMM 440 and IMM 1017) and a list of designated physicians and instructions. (Chapter 3 of the IR manual). If overseas dependants are included in the application, procedures in section 7.1 below must be initiated.

Under A46.04(4), an immigration officer may, when granting landing, impose terms and conditions of a prescribed nature. R23(1)(a) allows an immigration officer to impose a condition requiring an immigrant, including a Convention refugee who does not meet normal medical requirements, to report for medical examination, surveillance, or treatment at times and places specified by the immigration officer. An IMM 535, "Medical Surveillance Undertaking," should also be completed when required.

When issuing an immigrant visa to a dependant who does not meet normal medical requirements, the visa officer should indicate which of the above conditions should be imposed at the port of entry. An IMM 535, "Medical Surveillance Undertaking", should be completed when required.

If, in the opinion of a medical officer, a dependant requires special medical attention, the visa office must advise the Director, Immigration and Overseas Programs, International Service Group, who will in turn advise the appropriate provincial health authorities sufficiently in advance of the person's arrival in Canada.

c) Requirement for passport, travel document, or satisfactory identity document [A46.04(8)].

Convention refugees and their dependants shall **not** be landed until the Convention refugee is in possession of a valid and subsisting passport or travel document or a satisfactory identity document.

d) No landing if judicial review not disposed of [A46.04(3.1)].

A Convention refugee may not be landed until there has been a final disposition of an application made by the Minister for judicial review under the Federal Court Act. The Appeals Section, NHQ, will inform the CPC whenever an application for judicial review is made. These are normally high profile, contentious cases.

6.3 What to do if applicant or dependant is inadmissible

If it is determined that an applicant is inadmissible on criminal or security grounds, the CPC must transfer the file to the applicable CIC for refusal. If a dependant for whom landing is sought is inadmissible, the dependant may be removed from the application. See section 4.4 above for instruction regarding removal of a dependant from applications for permanent residence. If the inadmissible dependant is not removed, the principal applicant's application must be refused. If the applicant or a

dependant in Canada is inadmissible on criminal or security grounds, a report under A27 must be written and forwarded to the Deputy Minister's delegate.

Where a person against whom a removal order or conditional removal order is made by an adjudicator is determined to be a Convention refugee and is refused landing on an application under A46.04, a senior immigration officer shall cause the inquiry with respect to the person to be reopened as soon as practicable. [A46.07(1)]

Where a person against whom a removal order or conditional removal order is made by a senior immigration officer is determined to be a Convention refugee and is refused landing under A46.04, a senior immigration officer shall determine whether or not the person has a right under subsection 4(2.1) to remain in Canada [A46.07(1.1)] and confirm or quash the order as appropriate [A46.07(3)].

If an application is refused, the client must be advised of the decision in writing [A46.04(6)].

> ***Note:*** *Convention refugees and their dependants may be landed even if described in A19(1)(a) for medical inadmissibility or A19(1)(b) for being unable or unwilling to support themselves.*

6.4 Positive decisions on admissibility

Once Convention refugees and their family members in Canada and abroad meet the requirements as listed in section 6.2 above, permanent residence can be granted to all applicants.

Immigrant visas are to be issued to dependants only if they are able to prove relationship to the principal applicant, in addition to meeting the requirements of A46.04(3).

Please note that the dependant of a Convention refugee in Canada is **not** automatically a Convention refugee and is not accorded the same protection as a Convention refugee once in Canada. A dependant who is subsequently reported under A27(1) may be removed from Canada.

6.5 Coding

Convention refugees who are determined in Canada are to be coded as immigrant category "CR8". Dependants of Convention refugees who are recognized as Convention refugees in their own right by the Immigration Refugee Board (IRB) should also be coded CR8. Dependants of Convention refugees in Canada who have not been deemed to be Convention refugees by the IRB should be coded DR1. This is important in case there is a A27(1) report later on the dependant. (Please refer to section 7.3 of this chapter for coding of dependants residing outside of Canada.)

7. DEPENDANTS OVERSEAS

7.1 Processing the application and issuance of visas

If overseas dependants are indicated on IMM 5202, the CPC will send a facsimile of the application to the appropriate visa office. The CPC file number should be indicated on the facsimile.

It is important to ensure that a complete address is available so dependants can be contacted. If there is no specific address, enough information must be provided to enable the dependants to be contacted (e.g. name of refugee camp; address of friend or relative).

On receiving the information, the visa office will have dependants complete an IMM 8, "Application for Permanent Residence in Canada", and carry out the necessary medical examinations and security clearances. These cases are to be given high priority, the same as for processing the Convention refugee application for landing in Canada.

Visa officers will advise the CPC as soon as the dependants have met all the requirements. Visas should **not** be issued to dependants abroad until the CIC in Canada confirms that the principal applicant has been landed.

The CPC will then input the landing information into FOSS so the CIC may proceed to land the applicant and any dependants in Canada. The number of overseas dependants, the name of the post abroad and when available, the overseas file number will be entered in the remarks block of the IMM 1000. All overseas dependants will also be listed in the remarks area in the case processing module in FOSS. The CIC will, according to local procedure, print the landing documents within the CPS module of FOSS. The CIC will send a call–in notice or letter to the client advising of the appropriate time to appear for landing. Once the applicant and dependants in Canada are landed, the CIC will then advise the post abroad by telex that landing has occurred and immigrant visas may be issued to dependants provided relationship has been established.

7.2 Dependants whose whereabouts are unknown

Notwithstanding counselling in Canada, cases may arise where a Convention refugee includes on his or her application for landing a dependant who cannot be found and, therefore, cannot be examined.

When this occurs, the visa officer should advise the CPC by telex. The CPC will contact the Convention refugee to request a more recent address or, if this is not possible, to have the Convention refugee delete the dependant from the application. Once deleted, immigrant visas may then be issued to those dependants who are eligible for landing. See section 4.4 above for instruction regarding removal of dependants from applications for permanent residence.

7.3 Coding

Where there is more than one dependant being considered, the IMM 1343 overseas or the CAIPS processing screen will show the oldest dependant as the principal applicant. If dependants of a Convention refugee are also

deemed to be Convention refugees, they should also should be coded CR8. Other dependants who are processed abroad will be coded as immigrant category "DR2".

8. MISCELLANEOUS

8.1 Transitional procedures

There may be cases where an applicant was determined to be a Convention refugee and made application for permanent residence under C–55, but was not landed prior to the implementation of C–86. C–86 more narrowly defined the definition of "dependant". These applicants may have on their applications for permanent residence, their never–married sons and daughters, who now do not meet the definition of "dependant".

Section 109 of the Transitional Provisions states:

> "Subject to sections 110 to 120, every provision of the Immigration Act as enacted by this Act shall, on the coming into force of that provision, apply in respect of every application, proceeding or matter under that Act or the regulations made thereunder that is pending or in progress immediately before the coming into force of that provision."

Therefore, unmarried children who do not meet the current definition of "dependant" per R2, cannot be landed under A46.04(3).

Those dependants in cases described above that appear deserving should be advised that an application under R2.1 would be considered. The client should be advised that Ministerial exemptions under R2.1 are considered on a case by case basis to determine if there are humanitarian and compassionate grounds why the applicant should be granted landing.

Refugees who were not landed prior to February 1, 1993, because they were described in A19(1)(a) or A19(1)(b) may now be landed as their inadmissibility is no longer a bar to landing.

8.2 Refugees who do not have a passport, travel document or satisfactory identity document

Convention refugees who do not have a **valid and subsisting** passport or travel document may **not** be landed **until** they can produce a "satisfactory identity document" as required in A46.04(8).

The expression "satisfactory identity document" means that the immigration officer is satisfied that the identity document is a genuine document, that it belongs to the Convention refugee, and that it provides evidence of the person's identity. In order to provide satisfactory evidence of the person's identity, it should normally predate the claim to refugee status.

Where a Convention refugee applying for landing does not have a valid and subsisting passport or travel document and is not in possession of a satisfactory identity document, immigration officers in Canada cannot process the application under A46.04, nor should they ask the visa office to initiate processing for dependants of the Convention refugee. Processing will be deferred until satisfactory documents are presented.

Convention refugees who cannot be landed for lack of a satisfactory identity document continue to enjoy the protection of Canada and may be issued an employment authorization under R19(4)(j).

Where Convention refugees provide passports, travel documents, or identity documents which show them to be citizens of a country other than the one from which they have been granted refuge, refer the case to the Regional Appeals Office in the region where the refugee resides. The Appeals Office may initiate a "reconsideration hearing" to deny the continued protection of Convention refugee status to persons whose claims were based on fraud or misrepresentation (see IS 13). Such persons are **not** eligible to apply for landing until their refugee status has been confirmed.

8.3 Abandoned applications

Where an applicant does not respond to requests for information or refuses to undergo a medical examination, the application can be declared abandoned. Do this only after giving the applicant reasonable opportunities to respond. Every effort to interview the applicant **MUST** be made.

If an application is declared abandoned and a conditional removal order or a conditional departure notice was issued, a senior immigration officer is required to have the applicant's inquiry reopened if the order was issued by an adjudicator, or, if issued by a senior immigration officer, shall determine whether or not the person has a right to remain in Canada under A4(2.1). [A46.04(5), (A46.07)]

9. SETTLEMENT PROGRAMS AND SERVICES (FOR QUEBEC RESIDENTS SEE SECTION 9.6)

9.1 Immigrant Settlement and Adaptation Program (ISAP)

Funds are provided to non–government organizations at the community level to deliver direct, essential services to newcomers, including: reception, information and orientation, translation and interpretation, referral to community resources, para–professional counselling, and employment related services. Immigrant settlement organizations are listed in the yellow pages of the local telephone directory under Social Service Organizations.

ISAP funded agencies sometimes operate job–finding clubs. The job–finding clubs provide intensive three–week courses to assist newcomers in understanding the Canadian labour market and how to fill out a job application, write a résumé, handle a job interview, and approach potential employers.

9.2 Host Program

Non–governmental organizations are funded to recruit, train and monitor volunteers, individuals, or groups, who help newcomers adapt, settle, and integrate into Canadian life. Resident Canadians develop friendships with newcomers. As they learn about the newcomers' home countries and cultures, Canadians help newcomers practice English or French, participate in community social events, and find employment opportunities. Immigrant settlement organizations are listed in the yellow pages of the local telephone directory under Social Service Organizations.

9.3 Adjustment Assistance Program (AAP)

This program provides financial assistance only to government assisted refugees (CR/DC1s and CR/DC5s) admitted under the Annual Refugee Plan. Therefore, CR8's are not eligible for AAP. AAP covers the cost of accommodation, necessary clothing and household effects, and living expenses for up to one year after arrival or until the newcomer obtains full–time employment, whichever comes first. AAP benefits are based upon prevailing provincial social assistance benefits. AAP is administered by designated Canada Immigration Centres.

9.4 Transportation Assistance and Admissibility Loans Program

Where the Convention refugee chooses to include dependants who are outside of Canada in their application for Permanent Residence, the Convention refugee will be responsible for the expenses the dependants incur in order to meet immigration requirements. These expenses may include the cost of undergoing a medical examination and the cost of transportation to Canada.

The Transportation Loans Program is funded by the Consolidated Revenue Fund and is replenished by repayments on the loans. Loans are made available to immigrants, normally Convention refugees or members

of a designated class, to cover the costs of medical examinations abroad and transportation to Canada. Loans are approved according to need and ability to repay. Refer to IS 25, Transportation Loans, for further information.

9.5 Language training

Language training opportunities are currently provided to adult immigrants through:

a) Language Instruction for Newcomers to Canada (LINC) – Through LINC, newcomers learn basic communication skills to help them integrate into the community and to provide them with the language skills they need to pursue more advanced training. LINC training will usually be offered during the immigrant's first year in Canada and course material will introduce newcomers to Canadian values, rights, and responsibilities.

b) Labour Market Language Training (LMLT) – Through LMLT, newcomers with existing job skills who are trying to enter the labour market will have access to advanced language training. For LMLT, participants can have access to unemployment insurance, social assistance benefits, as well as training allowances.

Language training is delivered by a variety of service providers across Canada.

9.6 Quebec residents

In Quebec, the services for the reception and the linguistic and cultural integration of permanent residents and refugees are provided by le Ministère des Affaires internationales, de l'Immigration et des Communautés culturelles. Refer applicants to the nearest office of the MAIICC.

10. RESPONDING TO REPRESENTATIONS

The Privacy Act requires that information concerning clients must be released only to the client or the client's designated representative. Prior to responding to a representation, be sure that clients or their representative reasonably verify their identity. This applies if the representation is made in person or by mail.

The decisions on an application for permanent residence made by Convention refugees are objective and straightforward. The Immigration Act does not allow discretion to be used in determining eligibility to apply for and admissibility to receive permanent residence. Thus, reconsideration of a decision should not be frequent. When representations do occur, respond to them by reiterating the grounds of ineligibility as stated in A46.04 of the Immigration Act or of inadmissibility for permanent residence stated in A19 of the Immigration Act.

11. REFERENCES

A2(2)	Reasons for which persons cease to be a Convention refugee.
A4(2.1)	Right of Convention refugees to remain in Canada and description of those who do not have that right.
A9(1)	All persons seeking admission to Canada, except in such cases as are prescribed in (1.1), must apply for and obtain a visa before appearing at a Port of Entry.
A10.2(1)	Immigrants who make applications in Canada for landing, may apply on behalf of that person and every dependant in Canada.
A11(1.1)	Requirement that refugee claimants undergo medical examination by a medical doctor.
A19(1)(a)	Persons inadmissible for reasons of health.
A19(1)(b)	Persons who there are reasonable grounds to believe are either unwilling or unable to support self and dependants.
A19(1)(c)	Persons convicted of a crime in Canada which may constitute serious criminality.
A19(1)(c.1)	Persons convicted of a crime outside Canada which may constitute serious criminality.
A19(1)(c.2)	Persons who have committed an act or omission outside Canada which may constitute serious criminality.
A19(1)(d)	Persons who there are reasonable grounds to believe will become involved in organized crime or commit at least one offence punishable by way of indictment under any Act of Parliament.
A19(1)(e)	Persons believed will engage in acts of subversion, espionage and terrorism.
A19(1)(f)	Persons believed to have engaged in acts of subversion, espionage and terrorism.
A19(1)(g)	Persons who there are reasonable grounds to believe will engage in acts of violence or are members of a group that will engage in such acts.
A19(1)(j)	Persons who there are reasonable grounds to believe have engaged in acts that constitute war crimes.
A19(1)(k)	Persons who constitute a danger to the security of Canada.
A19(1)(l)	Persons who were senior members in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations.
A46.04(1)	Provision that a Convention refugee may apply, within a prescribed period, for landing, and a description of those Convention refugees who are not eligible to apply.
A46.04(3)	Requirement that an immigration officer grant landing to Convention refugees who apply except for certain Convention refugees who are described in parts of Section 19.

A46.04(3.1)	Conditions which must be met for an immigration officer to grant landing.
A46.04(4)	An immigration officer may impose certain terms and conditions when granting landing to an applicant pursuant to this section.
A46.04(5)	Provision for an immigration officer to declare an application to have been abandoned.
A46.04(6)	Requirement for an immigration officer to render a decision as soon as possible and to provide a written notice of the decision to the applicant.
A46.04(7)	Conditional removal orders and departure notices deemed never to have made if the person concerned is granted landing pursuant to A46.04.
A46.04(8)	Requirement of the applicant to have a passport, travel document or satisfactory identity document prior to landing.
R16(a)(iv)	Permits refugee claimants to apply for student authorizations from within Canada.
R16(a)(v)	Permits the dependants of refugee claimants to apply for student authorizations from within Canada.
R19(4)(j)	Allows Convention refugees to apply for employment authorizations from within Canada.
R20(5)(a)	Allows Convention refugees to apply for an employment authorization without validation.

IMMIGRATION

Canada

Chapter IP 4
Processing
Live–in Caregivers



Entire Contents of Chapter 4 are Missing.

7. APPLICATION FOR PERMANENT RESIDENCE IN CANADA

Participants in the Live–in Caregiver Program can apply for permanent residence after they have worked for two years in the program. They must first meet the requirements of the Live–in Caregivers Class to apply for landing, and then meet the landing requirements for that class. This section explains how to process applications for landing made by members of the live–in caregivers in Canada class.

7.1 Steps in processing the application

The main steps in processing an inland application for landing made by a member of the live–in caregiver in Canada class are:

a) sending a letter to the applicant along with their employment authorization extension, advising them when they will be eligible to apply for permanent residence and how to request the "application for landing" kit;

b) providing information on the requirements which they must meet;

c) receiving and screening the application;

d) determining the membership in the live–in caregivers in Canada class;

e) referring to Overseas Health Programs (OHP), medical cases that were originally assessed as M3; (A new examination is not required for M1 or M2 cases.)

f) initiating medical, criminal, security and any other examination to determine if the member meets the landing requirements of the class;

g) issuing interim documentation;

h) providing appropriate counselling to both approved and refused live–in caregivers;

i) recording the decision in FOSS;

j) providing feedback to refused live–in caregivers if necessary; and

k) landing those members of live–in caregivers in Canada class who meet the landing requirements of the class.

7.2 The application

Before it can be determined whether live–in caregivers meet the criteria for their class, and eventually meet landing requirements, information and documentation found in a completed application for landing is needed. This section describes how applications for permanent residence from live–in caregivers are screened.

7.3 Assessing the application

Immigration officers determine whether or not a person who is a member of the live–in caregivers in Canada class, is eligible to apply and meets the landing requirements for this class. The regulatory basis for this is found in R11.3(c) which states that members of this class must have submitted an application for landing to an immigration officer.

Live–in caregivers must provide enough information to let the immigration officer decide the following:

a) determine whether the live–in caregiver is eligible to have an application processed in Canada;

b) determine if the live–in caregiver meets landing requirements;

c) refer the live–in caregiver and dependants in Canada and abroad, for an examination concerning admissibility under A19.

7.4 How do clients submit an application

Live–in caregivers in Canada apply for landing by completing an IMM 5001, *In Canada Application for Landing* and an IMM 5284, *Supplementary Information/Live–in Caregivers*. The forms and a guidebook are contained in the Application Kit for live–in caregivers.

Applicants send completed forms to the Case Processing Centre (CPC) in Vegreville, to be processed.

7.5 Date of the application

Applications are considered to be made on the day the application and the correct processing fees are received at the CPC. Applications that are returned to the client do not constitute an official application.

7.6 Screening the application for completeness

Applications and the supporting documentation must be reviewed to verify:

- proper completion of the application (IMM 5001) and supplementary form (IMM 5284). The immigration officer must ensure the applicant has signed the application.

The following documentation must also be enclosed:

- 2 passport–size photographs of each family member in Canada (in addition to the photographs of the principal applicant); and
- a photocopy of the applicant's identification documents;
- photocopies of documentation supporting evidence of two–year employment;
- the applicable processing fees.

7.7 What to do if the application is incomplete

If the application does not include the required documents/fees, is not completed properly or is unsigned, enter in FOSS the date the application was made and the reason for the return. Send the entire package back to the client with a letter explaining the reason for the return.

7.8 Tracking of the application

The Field Operational Support System (FOSS) tracks processing of applications for permanent residence made by members of the Live–in Caregiver class, through the Case Processing Support (CPS) module. Applications must be entered in the CPS module when they arrive at the CPC.

Names of dependants residing abroad are also entered in the remarks section and the Y (yes) or N (no) box completed, when the visa office provides results of overseas examination (see section D – Processing dependants).

Citizenship and Immigration

Canada

Chapter IP 5

Immigrant Applications in Canada Made on Humanitarian or Compassionate (H&C) Grounds



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1 INTRODUCTION

1.1 What this chapter is about

This chapter explains how to assess applications for an exemption from the requirement to apply for and obtain an immigrant visa outside of Canada [A9(1)] due to the existence of humanitarian and compassionate (H&C) grounds [A114(2) and R2.1].

> ***Note:*** *Such applications are often called "H&C applications"; this term will be used in this chapter.*

1.2 Policy intent of subsection A9(1)

Subsection 9(1) of the *Immigration Act* states that except in such cases as are prescribed, every immigrant shall apply for and obtain an immigrant visa before appearing at a Canadian port of entry. Thus, it is a cornerstone of the *Immigration Act* that, prior to their arrival in Canada, ***persons who wish to live permanently in Canada*** must

- submit their application outside Canada
- qualify for, and
- obtain an immigrant visa.

1.3 Exceptions to subsection A9(1)

For exact wording, refer to the *Immigration Act.*

Act	Says
114(2)	Governor-in-Council may, by regulation, authorize the Minister to exempt any person from any regulation made under A114(1) or otherwise facilitate the admission to Canada of any person, where satisfied that the person should be exempted from that regulation or that the person's admission should be facilitated owing to the existence of H&C considerations. (Under the authority of Section 2.1 of the *Immigration Regulations*, the Governor-in-Council has given the Minister full authority to exercise the powers found in subsection 114(2) of the Act.)
38(1)	Governor in Council may authorize landing of any person who, at the time of landing, has resided continuously in Canada for at least five years under the authority of a Minister's permit.
46.04(1)	Persons determined by the Immigration and Refugee Board to be Convention refugees may have their application for permanent residence processed in Canada.
6(5)	Applications for landing inside Canada are permitted for reasons of public policy or compassionate or humanitarian considerations for immigrants who are members of a class of immigrants prescribed by regulations made under A114(1)(e). Currently, these are • Live-in Caregivers in Canada Class • Post-determination Refugee Claimants in Canada Class • Undocumented Refugee Class.

1.4 Why exceptions to subsection A9(1) exist

The *Immigration Act* and Regulations set out specific requirements for granting permanent residence. These requirements reflect the objectives of the Act but do not cover all circumstances. The purpose of H&C discretion is to allow flexibility to approve deserving cases not anticipated in the legislation. Therefore, use of this discretion should not be seen as conflicting with other parts of the Act or Regulations but rather as a complementary provision enhancing the attainment of the objectives of the Act.

Discretion is a valuable element of Canada's immigration program. It benefits our clients and is consistent with the objectives of the *Immigration Act* in upholding Canada's humanitarian traditions. However, discretionary decisions must be made with

the utmost care and good judgement. Before granting a discretionary exemption, consider the intent of such provisions.

1.5 Authority to assess H&C requests

Under the authority of Section 2.1 of the *Immigration Regulations*, the Governor-in-Council has given the Minister full authority to exercise the powers found in subsection 114(2) of the Act.

1.5.1 Current delegation of authority

The Minister has delegated the decision making in R2.1 to most immigration officers in Canada. This delegated authority is limited to exempting immigrants from A9(1) - the immigrant visa requirement - and R14(1) - the immigrant passport requirement. The delegation instrument for R2.1 lists the immigration officer positions with this authority.

There is no need to exempt applicants from R8 (see following section).

1.5.2 Previous delegation of authority – Before February 1, 1993

On February 1, 1993, Bill C-86 changed the wording of R2.1 and A114(2). Prior to this date, the delegated authority to exempt persons from immigration requirements was the Governor-in-Council. This meant that the H&C officer reviewing a case favourably could only grant "approval-in-principle" pending a submission to, and then subsequent concurrence of, the Governor-in-Council to grant landing by an Order-in-Council (OIC).

At that time, H&C applicants in Canada who were not sponsored were assessed against selection criteria and, if necessary, a waiver of R8 was requested. Currently, we do not waive R8 selection criteria for independent H&C applicants in Canada. Once the applicant is exempted from the need to have an immigrant visa[A9(1)], R8 is considered not applicable – it is a requirement of visa issuance and the applicant has just been exempted from the immigrant visa requirement.

Bill C-86 also introduced subsection A6(5), the authority to land prescribed classes of immigrants for reasons of public policy or H&C. This was a change from the previous provision that allowed landing of persons due to public policy considerations under R2.1 H&C guidelines. The current classes of immigrants are listed in the chart in Section 1.3 - *Exceptions to A9(1).*

Applications Before February 1, 1993

Order-in-Council has been issued

- Do not re-evaluate either the approval-in-principle decision nor the visa exemption decision granted by the OIC.
- Proceed with making the admissibility decision, that is, deciding whether the applicant should be landed or refused due to inadmissibility (see Section 9 to Section 12).

Order-in-Council has NOT BEEN issued

- Do not re-evaluate the approval-in-principle decision.
- Proceed with making the admissibility decision, that is, deciding whether the applicant should be landed or refused due to inadmissibility (see Section 9 to Section 12).

1.6 Discretion versus consistency

We face a challenge. The legislation does not provide any explanation or guidance about what constitutes humanitarian and compassionate grounds. Delegated persons have full authority to make this decision. At the same time, to be fair to our clients and to avoid just criticism, we need as much consistency as possible in the use of this discretion.

This chapter is structured to strike a balance between the two seemingly contradictory aspects of discretion and consistency. As much guidance as possible is given. However, in the end, the discretion of the decision-maker takes precedence.

1.7 Two distinct decisions - exemption from A9(1) and landing

An application under R2.1 requests an exemption from the immigrant visa requirement in A9(1) for H&C reasons; it is not an application for landing. However, a positive visa exemption decision has the effect of **creating an application for landing in Canada** and an immigration officer must make a second decision about admissibility before granting landing.

This is why the process is sometimes called the "two-step decision-making process for H&C".

1.7.1 First assessment: the H&C decision [exemption from A9(1)]

First, the decision-maker assesses H&C grounds and decides whether the applicant should be exempted from A9(1), the requirement to obtain an immigrant visa before coming to Canada. The applicant bears the onus of satisfying the decision-maker that the H&C factors present in his or her individual circumstances are sufficient to warrant an exemption. The decision-maker considers the applicant's submissions in light of all the information known to the Department.

1.7.2 Second assessment: the landing decision [compliance with A5(2)]

When a positive H&C decision is made, processing of the application for permanent residence begins. To be granted landing, the applicant must meet the requirements of subsection 5(2) of the Act which states that an immigrant shall be granted landing if he is not a member of an inadmissible class and otherwise meets the requirements of the Act and Regulations.

All information relating to landing requirements and admissibility of the applicant is assessed during the processing period, *up to and including the landing interview.* A negative landing decision can be made at any time during the processing, whenever the applicant is found to be inadmissible.

A **final positive** determination about admissibility and whether the applicant meets landing requirements can only be made **at the time of the landing interview.**

1.7.3 Terminology

Terminology Used In This Chapter

The process that includes both the H&C decision and the landing decision

- H&C application
- Application under R2.1

First part of the process (only the H&C decision)

- the first decision/assessment
- the H&C decision/request/assessment
- the A9(1) exemption decision
- the A9(1) waiver decision
- the step one decision
- the R2.1 decision/request/assessment

Second part of the process (only the landing decision)

- the second decision/assessment
- the landing decision/assessment

- the admissibility decision
- the A5(2) decision
- the step two decision

1.8 Steps in processing an H&C application

Main Steps	IP-5 Reference
Provide information to potential applicants on factors considered by an immigration officer making an H&C decision	2. Information for Clients
Receive and screen the H&C application	4. The Application
Calculate the processing fee	5. Cost Recovery
Determine whether an exemption from A9(1) is warranted due to the existence of H&C grounds	6. The H&C Decision and 8. General Case Types
Inform the applicant of the H&C decision	APPENDIX A - ANNEXES 1 to 7 - Sample Letters
Process applications for those who receive a positive H&C decision	9. Assessing Admissibility and 11. Processing the Application for Landing
Provide appropriate counselling (feedback) to applicants (approved or refused)	2. Information for Clients and APPENDIX A - ANNEXES 1 to 7 - Sample Letters

1.9 Notes to file

Guidelines for note taking

Be objective

- Record facts not your opinions or interpretation of the facts.

Be clear and concise

- Use common language and avoid jargon.
- Use complete words.
- Avoid extraneous comments.

Point form is fine in most cases; there will be times when notes will need to be more fully recorded (e.g. using Q & A format)

Examples of when your notes should be expanded may include the following situations:

- Strong reactions by the applicant
- Interference from others present at the interview
- Marriage interview
- The issue(s) discussed is crucial to your decision.

Organize your notes with self-explanatory headings

Make it easier for readers to follow the case history by using headings for your entries such as

- Paper file review
- Interview
- Decision
- Pending or Information outstanding

- Representation
- Interpreter information

Record who was present during the interview

- Make sure that it is clear who said what

Record your notes at the first available opportunity

- Review your notes after the interview to make sure they are clear.
- Make revisions where required.
- You may wish to expand on parts you feel are particularly important.
- Revisions are acceptable and should be done at the first opportunity while the information is fresh in your mind.

Notes should include

- How the decision was made
  - i.e. based on paper file review or interview
- If an interpreter was used
  - Include the name of the interpreter and relationship to the applicant, language of interpretation and instructions given to the interpreter
- Summary of correspondence and communication
  - Contents of all non-routine correspondence, form numbers of routine correspondence sent and summary of any telephone conversations; FOSS notes should represent a complete record of all action taken in the case – there should be no information that appears *only* on the paper file
- Tone of the interview
  - e.g. if the applicant was angry or upset, record this in your notes.
- If you left your office during the interview, record this and explain it.
- Record the start and finish times of the interview
- Date and initial your notes.

1.10 Recording the reasoning behind your H&C decision

Guidelines for recording reasoning for your H&C decision

- Record all the factors you considered in making your decision, both positive and negative.
- Explain your thought process. Make no assumptions; fill in the gap between the facts listed and your decision.
- Avoid absolute statements like "there is no evidence" or "there would be no hardship"; usually what we really mean is that there is insufficient evidence or insufficient hardship.
- Use neutral terms.
  - For example, it is preferable to say, "he states" rather than "he claims" or "he admitted".
- Where possible, avoid strong comments on the credibility of the information.
  - For example, if you write "I do not believe", this suggests that you are questioning credibility. In this case, you need to demonstrate that you have fully

investigated the issue (e.g. interviewed applicant). If you use the phrase "I am not satisfied"; it is less contentious and keeps the onus on the applicant to satisfy you.

- Comment on the evidence rather than the inference you draw from the evidence.
  - For example, don't comment on whether or not a common-law couple has a close relationship; comment on whether sufficient evidence has been submitted to satisfy you that there is a genuine relationship.
- Once you are satisfied that you have adequately addressed an issue, don't go any further by trying to reinforce your decision.
- Your notes should be written in simple, straight-forward and dispassionate language.
- Record how the applicant was given the opportunity to be heard, i.e. was provided with an opportunity to satisfy you of the H&C considerations in relation to his or her case.

2 INFORMATION FOR CLIENTS

2.1 Why provide information to H&C applicants

Providing information on the processing of H&C requests enables applicants to

- find out how and where to obtain more information
- learn what guidelines exist for decision-makers, thereby helping applicants formulate their H&C submissions and self-assess their chances of success
- learn how to complete their application
- learn what documents they need to support their application.

2.2 How to provide information

Information on making an H&C application is available from

Citizenship and Immigration Call Centres with access to an operator

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
elsewhere in Canada (toll-free)	1-888-242-2100

Application kits:

- **IMM 5289 - Applying in Canada for Landing - A Guide for Spouses of Canadian Citizens or Permanent Residents**
- **IMM 5291 - Applying for Landing in Canada - A Guide for Humanitarian and Compassionate Cases**

Note: *Application kits and pamphlets are available at CICs listed under "immigration" in the Government of Canada pages of municipal telephone directories or by contacting a Citizenship and Immigration Call Centre.*

These kits contain

- a guidebook explaining the factors considered by the Minister's delegate when assessing an H&C request, and instructions for completing forms
- copies of the IMM 5001 **In Canada Application for Landing** form, IMM 5285 **Supplementary Information - Spouse in Canada** and IMM 5283 **Supplementary Information - Humanitarian and Compassionate Cases**

Note: *The* IMM 5001 *and two supplementary forms* IMM 5285 *and* IMM 5283 *are used to evaluate H&C grounds. They are only considered an "application for landing" if a positive H&C decision is rendered. It would not be efficient to send out two sets of forms, one to evaluate H&C grounds and a later set to serve as the application for landing.*

- a list of documents to submit with the application
- an IMM1344A **Application to Sponsor**, an IMM 1344B Undertaking, an IMM 1344C **Sponsorship Agreement** and IMM 1283 **Financial Evaluation**.
- Cost recovery information.

3 ELIGIBILITY

3.1 Eligibility to submit an H&C application

Other than Canadian citizens or permanent residents, persons who are in Canada and believe there are sufficient H&C grounds for an exemption from A9(1) and who pay appropriate cost recovery fees, may submit an H&C application. This includes persons who are inadmissible, refugee claimants, failed refugee claimants challenging a negative CRDD decision, in or out of status, at inquiry or under removal order.

3.1.1 H&C applications submitted by permanent residents or Canadian citizens

Applications submitted by permanent residents (or Canadian citizens) are ineligible for consideration. The rationale for this is that they cannot apply for a status they already hold. Why would a permanent resident want to submit an H&C application? This usually occurs when permanent resident status (or Canadian citizenship) is in question. The following scenarios may assist in assessing whether a person is eligible to make an H&C request.

Scenario 1: A permanent resident, subject to a removal order, decides to appeal the adjudicator's ruling on loss of status and simultaneously files an H&C application (in case the appeal is not successful). Subsection A24(1) indicates a person ceases to be a permanent resident when a removal order is issued against the person and the order is not quashed or its execution is not stayed. Since the appeal action seeks to quash the removal order, the final determination on loss of permanent resident status must await the outcome of the appeal. The applicant would be assessed as **ineligible** for the H&C process.

Scenario 2: A married couple who were granted permanent residence many years ago have been residing in their country of origin for the last ten years. Upon returning to Canada, they are not able to satisfy the examining officer that they did not abandon Canada as their place of permanent residence. They are allowed to enter on visitor documents. A re-determination interview was held at the local CIC and the decision of the examining officer was confirmed.

(i) The couple concurs with this assessment and indicates a desire to submit an H&C application. They voluntarily relinquish their Landing Records and sign statements to this effect. They would be **eligible** to make an H&C request because they are visitors in Canada.

(ii) The couple does not concur with the assessment of loss of permanent resident status and wishes to have the question put before an adjudicator. At the same time, they decide to submit an H&C application in the event the adjudicator confirms that there was a loss of status. They would be **ineligible** to make an H&C request because they may, in fact, still be permanent residents.

Scenario 3: A person faces loss of Canadian citizenship under 10(2) of the Citizenship Act for misrepresentation pertaining to admission to Canada. Realizing that loss of citizenship means that he/she does not revert to permanent resident status, that person submits an H&C application. [Note: Persons who obtain Canadian citizenship by fraud or misrepresentation in the citizenship process alone, face loss of citizenship under 10(1) of the Citizenship Act and would revert to the status of a permanent resident.]

The foregoing scenarios illustrate the difficulties which would develop if one branch of CIC were to entertain an H&C application at the same time another branch was defending an appeal; we would be working simultaneously at cross-purposes. Bear in mind as well, H&C factors are always taken into account prior to the issuance of a direction to inquiry. New H&C factors developing after the direction to inquiry can be considered at the appeal hearing. And finally, because the appeal may be successful, there is a possibility that the applicant is still a permanent resident.

If an H&C application is received from a permanent resident or Canadian citizen and loss of status is being examined, return the kit and the cost recovery processing fees and inform the client that permanent residents or Canadian citizens are not eligible for H&C consideration (see Sample letter in APPENDIX E - ANNEX 1).

If an H&C application is received from former permanent residents who have been allowed in as visitors (either on a Visitor Record or passport endorsement) and there is no information to indicate that a re-determination interview has been scheduled, return the kit and the cost recovery processing fees and advise that the local CIC will be in contact to set up a re-determination interview (see Sample letter APPENDIX E - ANNEX 2).

3.2 Applicants under a removal order

Persons under a removal order who submit an H&C application and pay the appropriate fee are entitled to a decision on that application. However, there is **no** requirement to delay removal in such cases. Therefore, clients seeking a decision prior to removal must submit their application well before removal is scheduled. Where the H&C assessment will not be completed prior to removal, counsel applicants that

- their H&C application will be considered after removal
- when a decision is made, they will be informed in writing, and
- if their application is approved and they are otherwise admissible to Canada, they will be allowed to return to Canada for processing (see Section 9.10 - *Positive H&C decision following removal*).

Do not request applicants to attend an H&C interview in Canada after the date scheduled for their removal. To avoid this, contact the local removals unit to obtain information about removal plans before scheduling an H&C interview. Where an interview is required and it cannot be done prior to removal, it may be conducted via telephone or by a visa officer following removal.

3.3 Inadmissible persons

Persons who are inadmissible may submit an H&C application. However, a positive H&C decision **does not** overcome their inadmissibility. Therefore, notwithstanding the positive H&C decision, the application for landing must be refused. If you are considering recommending a Minister's permit, refer to the guidelines in OM IP 95-07 and Manual Chapter IP 12 *Minister's Permits*. For guidelines on A27 reports and recommending dispositions, see manual chapter EC 9.

Persons who believe they may be criminally inadmissible should complete an application for criminal rehabilitation or, if the conviction was in Canada, an application for a pardon. This process allows individuals to regain their "admissible" status prior to submitting an H&C application.

Persons who are not eligible for rehabilitation or a pardon may complete the rehabilitation form IMM 1444 - **Submission for Approval of Rehabilitation**) and mark the box "for information only". An officer will review the form and determine whether a Minister's permit should be recommended (see IP 12 for details relating to Minister's permits).

3.4 Simultaneous refugee claims and H&C applications

An H&C application can be made in parallel with a refugee claim or a legal challenge to a negative CRDD decision. It is inappropriate to counsel clients to withdraw from these other processes as a condition for an H&C application. This must be left up to the client.

When landed immigrant status is granted, it may affect the applicant's eligibility to continue with either a refugee claim or judicial review application of the negative CRDD decision. A signed withdrawal statement is neither mandatory nor necessary prior to landing. After landed immigrant status has been granted, inform either the Refugee Division of the IRB (for a refugee claim) or the Department of Justice (for a judicial review application) of the positive landing decision.

4 THE APPLICATION

4.1 Submitting an H&C application

Kits which include the forms indicated below are completed and returned to the Case Processing Centre (CPC), Vegreville, Alberta.

APPLICANT IS	COMPLETES
a spouse	IMM 5001 Request for exemption from immigrant visa requirement IMM 5285 Supplementary information - Spouse in Canada
other than spouse	IMM 5001 Request for exemption from immigrant visa requirement IMM 5283 Supplementary information – Humanitarian and Compassionate cases

4.2 Screening the application

Applications are screened at the CPC to make sure that

- appropriate forms have been submitted
  - IMM 5001 **In Canada Application for landing:** IMM 5283, IMM 5285 **Supplementary Information** forms and, in the case of family class applicants,c (Application to Sponsor), IMM 1344B (Undertaking) and C (Sponsorship Agreement) and IMM 1283 **Financial Evaluation**
- all forms are signed and dated and all boxes completed
- the applicant and, if applicable, potential sponsor reside in Canada
- when the applicant has dependants abroad, the address is complete and in the script of the country of residence
- supporting documents as listed on either of the IMM 5281 **Document Checklist - Spouse in Canada** or IMM 5280 **Document Checklist - Humanitarian and Compassionate Grounds** are attached (**note:** A completed Document Checklist should be included but is not essential).
- the correct processing fee is included.

4.3 What to do if the application is incomplete

If you request anything from the applicant, you should specify the date by which the applicant must send the documents and the consequences of not responding by that date. (See Section 11.3 - *Decision-maker requires further information and* APPENDIX A - ANNEX 3 - *sample letters*)

WHEN	THEN
The application is unsigned or undated	Return the application for completion
The processing fee is incorrect	Return the application kit to the client
Documents are missing	Send a letter to the applicant specifying what is required
Information is missing on the forms	Contact applicant by letter or telephone and request the missing information; if necessary, return the entire application
Photocopies are not legible	Return the photocopies and request clear photocopies

4.4 Who assesses H&C applications

All H&C applications are sent to the CPC in Vegreville. Service Delivery Agents or Service Delivery Specialists at CPC Vegreville review all applications and supporting documents.

If they can make a positive H&C decision, the application is processed at the CPC. If not, the application is referred to a CIC. Immigration officers or counsellors at inland CICs make decisions on referred applications.

4.5 Referral principles

Applications are usually referred to a local CIC when

- The case is complex or requires an in depth assessment of bona fides or degree of hardship before making a decision
- a personal interview is required, or
- refusal is a possible outcome.

5 COST RECOVERY

5.1 The fees

Section 3 of the **Immigration Act Fees Regulations** and the related **Fees Schedule** prescribe fees for an H&C application. Both are included in manual chapter IL 4. An application under R2.1 is described as an "application for ministerial exemption and for landing in Canada" in these regulations.

Applicants must pay the cost recovery fee when they submit their application. The fee is non-refundable even if the H&C application is refused; fees are charged for the process, not the result. There are fees for

- the H&C application
- each dependant included in the H&C application who is in Canada
- applications for employment or student authorizations or extensions of visitor status.

5.2 Forms of payment

A record or receipt, according to the *Financial Administration Act*, is issued when the correct fee is received.

Applications sent to the CPC-V must include an official receipt from a designated financial institution according to the policy for Handling of Public Monies (HPM) as outlined in OM IR 98-02. Applications without this official receipt will be returned to the client.

For those applications submitted directly to a CIC:

Do Accept

- cash
- credit card (VISA and Mastercard only)
- traveller's cheques*
- money orders including postal money orders*

***Note:** *should be made payable to The Receiver General for Canada*

Do Not Accept

- personal cheques

***Note:** For more cost recovery information, see* IL 4 - *Immigration Act Fees Regulations, IR 5 Immigration Cost Recovery Processing; or individual guides for Applying for Landing in Canada.*

6 THE H&C DECISION

6.1 What is meant by "humanitarian and compassionate grounds"

Applicants making an application under R2.1 are requesting processing in Canada due to compassionate or humanitarian considerations. Subsection R2.1 provides the flexibility to approve deserving cases for processing within Canada, the circumstances of which were not anticipated in the legislation.

Applicants bear the onus of satisfying the decision-maker that their personal circumstances are such that the hardship of having to obtain an immigrant visa from outside of Canada in the normal manner would be (i) **unusual and undeserved** or (ii) **disproportionate**. Applicants may present whatever facts they feel are relevant.

The following definitions are not meant as "hard and fast" rules; rather, they are an attempt to provide guidance to decision makers when they exercise their discretion in determining whether sufficient H&C considerations exist to warrant the requested exemption from A9(1).

Unusual and undeserved hardship

The hardship (of having to apply for an immigrant visa from outside of Canada) that the applicant would face should be, in most cases, unusual. In other words, a hardship not anticipated by the Act or Regulations, and

The hardship (of having to apply for an immigrant visa from outside of Canada) that the applicant would face should be, in most cases, the result of circumstances beyond the person's control.

Disproportionate hardship

Humanitarian and compassionate grounds may exist in cases that would not meet the "unusual and undeserved" criteria but where the hardship (of having to apply for an immigrant visa from outside of Canada) would have a disproportionate impact on the applicant due to his or her personal circumstances.

6.2 General establishment guidelines

The applicant's degree of establishment in Canada may be a factor to consider in certain situations, particularly, when evaluating some case types described in Section 8:

Section 8.4.2 *Parents/grandparents not sponsored as members of the family class*

Section 8.5 *Separation of parents and children (outside the family class)*

Section 8.6 *De facto family members*

Section 8.7 *Prolonged inability to leave Canada has led to establishment*

Section 8.10 *Family violence*

Section 8.11 *Former Canadian citizens*

Section 8.12 *Other cases.*

Establishment of the applicant up to the time of the H&C decision can be considered. However, it is inappropriate to assess the *potential* establishment of the applicant as this falls within the scope of admissibility criteria.

Consider the following factors to assess establishment in Canada:

- Does the applicant have a history of stable employment?
- Is there a pattern of sound financial management?
- Has the applicant integrated into the community through involvement in community organizations, volunteer or other activities?

- Has the applicant undertaken any professional, linguistic or other study that show integration into Canadian society?
- Do the applicant and family members have a good civil record in Canada?

  (e.g. no interventions by police or other authorities for child or spouse abuse, criminal charges)

6.3 How to make a humanitarian and compassionate decision

A positive H&C decision is an exceptional response to a particular set of circumstances. An H&C decision is more complex and more subjective than most other immigration decisions because officers are using their discretion to assess the applicant's personal circumstances. Officers are bound to ensure that their decisions are made in a procedurally fair manner (see Section 14 - *Administrative law principles to guide your decision-making*).

Keep the following guidelines in mind when making an H&C decision:

- Carefully consider **all** the information you have before you.
- Inform applicants when you are relying on information they did not supply (extrinsic information) and give them an opportunity to respond to it.
- If you require more information, request it. See Section 11.3 - *Decision-maker requires more information,* Section 11.4 - *Information received after specified response time has elapsed* and Section 11.5 – *Loss of contact with the applicant.*
- Consider dividing the facts into two categories, those that you believe favour a finding of hardship and those that do not. Some facts will be more important to you than others.
- Use your best judgement to weigh **all** the facts according to their importance.
- Consider the objectives of the Act and that R2.1 exists to allow flexibility for approving deserving cases not anticipated in the legislation.
- It may be helpful to discuss cases with your colleagues and supervisor on a regular basis in order to share ideas. However, you must make your own decision based on the information you have before you.
- After considering all the facts and weighing them accordingly, make your decision based on the entire set of circumstances before you.
- Make appropriate notes to file. See Section 1.9 - *Notes to file.*

6.4 Two possible outcomes

There are two possible outcomes at the end of the H&C assessment:

WHEN	THEN
The H&C decision is NEGATIVE; the A9(1) exemption is not granted	• Send a ***refusal letter*** to the applicant informing that an exemption from A9(1) will not be granted (see APPENDIX A - ANNEX 1). • Update FOSS with the refusal information. • No further action required; the application for permanent residence has been refused and is **closed**. • Instructions to the refused applicant for confirmation of departure are at the discretion of the decision-maker.

The H&C decision is POSITIVE; the A9(1) exemption is granted **Note:** Once you have granted the visa exemption, all requirements exclusively associated with issuance of an immigrant visa no longer apply to the applicant. Therefore, the applicants must be landed as long as they are not inadmissible and comply with all other requirements.	• Send an **approval letter** to the applicant informing that an exemption from A9(1) has been granted and that there is still a need to meet A5(2) requirements (e.g. admissibility) which, if not met, will result in the refusal of the application for permanent residence APPENDIX A - ANNEX 2. • Update CPC System/FOSS accordingly. • Begin processing of the application for landing.

6.5 Known or suspected inadmissibility of applicant (or dependents in Canada)

Decision-making can become complicated when, prior to or during the consideration of H&C factors, a known or suspected inadmissibility is identified. This can occur at the outset when reviewing the FOSS client history or information provided by the applicant on the IMM 5001. Some examples of known or suspected inadmissibility are when the applicant (or a dependent in Canada) is

- medically inadmissible
- submitting the H&C application based on a medical condition
- receiving social assistance
- the subject of a removal order for criminality or other serious inadmissibility [A19]
- the subject of outstanding criminal charges in Canada or elsewhere
- suspected of having committed criminal acts or omissions outside of Canada [A19(1)(c.1)(ii), 19(2)(a.1)(ii)]
- the subject of Minister's danger opinion [A39]
- not a Convention refugee as determined by the Immigration and Refugee Board by reason of section F of article 1 (an exclusion case).

The relationship between such facts and the H&C decision is important:

- You are **not** making a determination of admissibility or inadmissibility at this point.
- You are looking at **all** the applicant's personal circumstances, as provided by the applicant and as known to the Department, to determine if there are sufficient reasons for making a positive H&C decision. The facts relating to the known or suspected inadmissibility may be relevant to the H&C decision.

For example, you know that the applicant has a criminal conviction. When considering the H&C decision, you are not concerned with whether or not the conviction makes the applicant inadmissible. However, you may consider the applicant's actions, including those that led to and followed the conviction, when you make your H&C decision. You may wish to consider

- the type of criminal conviction
- whether the conviction is an isolated incident or part of a pattern of recidivist criminality
- length of time since the conviction
- what sentence was received
- any information about circumstances of the crime.

6.5.1 Criminal Charges Formally Laid and Still Outstanding

Decision-making can be particularly challenging when an H&C applicant is the subject of outstanding criminal charges in Canada or elsewhere. Remember that applicants bear the responsibility of providing all information required demonstrating that their personal circumstances warrant exemption from the immigrant visa requirement.

If the criminal charge is very serious (i.e. a conviction would factor largely into the H&C decision) and/or if it appears that it will be quite some time before the matter is resolved, it may be appropriate to refuse the application. This refusal would be based on facts before you at the time you are making the H&C decision, particularly the uncertainty relating to the outcome of the standing criminal charges. Remember to provide an opportunity for the applicant to address your concerns about the alleged criminal conduct and the outstanding charges in the context of the H&C application.

For example, all other factors of the case are very favourable but for an outstanding charge for shoplifting. The matter is expected to conclude before the courts within the next three months. You may decide that even if the applicant had a conviction for shoplifting, there are enough positive factors to offset the relatively minor and single incident of criminality. Another example of a more serious matter would be outstanding charge for attempted murder of a family member. If the applicant is being sponsored by a family member, you may wish to refuse the application and instruct the applicant to await the conclusion of the criminal matter before pursuing an application for permanent residence in Canada.

If, however, H&C factors are compelling and you decide that the situation merits a waiver of the visa requirement, follow the guidelines in Section 9.8 of this chapter.

6.6 Known or suspected inadmissibility of dependents abroad

Admissibility of dependents residing abroad **can** be a factor in your H&C decision. This is why applicants are required to answer questions on the IMM 5001 about the admissibility of their dependents. The inadmissibility of overseas dependents could have serious consequences for the family unit such as permanent separation of family members. Consider this information in conjunction with all other factors of the case. (Also Section 11.2 – *Dependents residing abroad.*)

6.7 Effect of a positive H&C decision

Section 1.7 - *Two distinct decisions*, told us that a positive H&C decision

- exempts the applicant from obtaining an immigrant visa outside of Canada, and
- creates an application for landing in Canada.

Section 2.2 - *How to provide information*, told us that form IMM 5001 and two supplementary forms, IMM 5285 and IMM 5283 are used to evaluate H&C grounds. The forms are only considered an "application for landing" when a positive H&C decision is rendered.

This process is followed because it would not be efficient to send out two sets of forms, one to evaluate H&C grounds and a later set to serve as the application for landing.

6.8 Re-opening the positive H&C decision

Once the H&C decision is made, the ability to re-open or revisit this decision is limited by the doctrine of *functus officio,* which is based upon the importance of "finality" in decision-making. Exceptions to this doctrine do exist -- the ones most commonly applicable to the H&C context involve situations where there is evidence of misrepresentation or fraud in relation to a material fact. In other words, an H&C decision cannot be reconsidered due to a simple change of circumstances. See Section 7.3 – *Withdrawal of sponsorship* for a common example in the H&C context.

6.9 Evidence of misrepresentation or fraud related to a material fact

When misrepresentation or fraud related to a material fact has occurred or is suspected, request written information from the client or schedule an interview; this depends on the situation and type of information required. The following describes situations and action to be taken. At each step, update FOSS.

WHEN	THEN
You suspect the applicant used fraud or misrepresentation to obtain the positive H&C decision	• send a letter to the applicant informing - the application may have to be reconsidered - why (the suspected fraud or misrepresentation) - that submissions may be made (APPENDIX B - ANNEX 1)
No reply from the applicant	• see Section 11.5 - *Loss of contact with the applicant*
Applicant's submissions received	• review the applicant's information and decide whether there is evidence of fraud or misrepresentation
After review of submissions, there is insufficient evidence of fraud or misrepresentation	• send a letter to the applicant informing - that there is insufficient evidence of the fraud or misrepresentation, and - normal processing of the application will continue
After review of submissions, based on the information available, there was fraud or misrepresentation of a material fact	• send a letter to the applicant informing - the original visa exemption is cancelled - the applicant is subject to a section 27 report - that applicant may submit information about his or her current situation to be taken into account in making the 27 report recommendation **Notes:** (1) As this is a step one refusal, there is no right of appeal. (2) If the applicant wants to make new H&C submissions, a new application plus fees is required.
No reply from the applicant	see Section 11.5 - *Loss of contact with the applicant*
Applicant submits information about current situation	• review all information on file, including new information - make your 27 report recommendation - send a letter to the applicant informing of decisions made (**Reminder**: When the applicant wishes to make new H&C submissions, a new application plus fees are required.)

6.10 Known or suspected adoption of convenience

The R2(1) definition of "adopted" lists three criteria for an adoption to be considered valid under the Act. It must

- be legal in the jurisdiction in which it occurred
- create a genuine relationship of parent and child, and
- not be for the purpose of gaining admission to Canada of the adopted person or of his or her relatives (adoption of convenience).

Paragraph R6(1)(e) dealing with adoptions and the family class repeats the prohibition against adoptions of convenience.

When studying a case for adoption, provincial authorities focus on the suitability of the adoptive parents and not on the foregoing three criteria. Therefore, whether or not provincial approval has been given, you must be satisfied that the three criteria in R2(1) have been met, especially that it is not an adoption of convenience.

For example, adoptions where the biological parents of the child are still living should be examined carefully. As well, for adoptions between adults (usually in consideration of inheritence matters), when approved adoption is shown as evidence of a familial relationship, this should be looked at closely. Remember that adoption is just one factor among others to be considered in reaching the H&C decision.

7 SPONSORSHIPS AND SPONSORSHIP APPEAL RIGHTS

Sponsorships must be considered properly in the H&C decision-making context. Rights and obligations of sponsors must be consistent whether applications are processed in Canada or abroad.

Generally, an H&C application based on family class relationship is supported by a sponsorship from a Canadian citizen or permanent resident. This is a practical way for relatives in Canada to support an application and to demonstrate their desire to have the family member remain in Canada. However, lack of a sponsorship does not mean that the H&C request should be refused; rather, it is just one of all of the other factors taken into account by the decision-maker.

The sponsorship approval decision must be made before looking at the H&C request. This is so that sponsorship existence or lack thereof and comparative importance of this fact can be considered when making the H&C decision.

Appeal rights are issued to the sponsor when the sponsored applicant receives a positive H&C decision but a negative landing decision.

The decision to exempt an applicant from A9(1) cannot be re-visited other than in cases of fraud or misrepresentation. This is why it is important to process any sponsorship ***before*** considering the H&C decision (see Section 6.8 – *Re-opening of positive H&C decision*).

The existence or lack of an approved sponsorship could be a significant factor when the H&C request is based on family reunification. However, there is no legal requirement that applicants be sponsored in order to be considered under R2.1. Where a family class relationship exists and the H&C application is **not** supported by an approved sponsorship, this is just one factor to be considered along with all of the other aspects of the application. The following sections provide further guidance for specific situations.

> ***Note:*** *All H&C requests approved without a sponsorship are outside of the family class. Therefore, provincial approval, as described in* Section 11.1 - *Applicants residing the province of Quebec, is required for persons residing in the province of Quebec.*

7.1 No sponsorship completed

Where an H&C application based on reunification of relatives who could be members of the family class is not supported by a sponsorship

- inform the applicant that an approved sponsorship, although not mandatory, is an important factor in an H&C application
- give the applicant an opportunity to have the sponsorship forms completed or explain why there is no sponsorship
- make the H&C decision when all the relevant facts are available.

7.2 Sponsorship submitted but refused

Where a sponsorship application was submitted but refused

- inform the applicant that the sponsorship has been refused (if this information has not already been relayed)
- make the H&C decision when all relevant facts are available.

7.3 Withdrawal of sponsorship

A sponsorship, once entered into by the sponsor and CIC (federal government), can only be set aside with the consent of both parties. Generally, requests from sponsors to withdraw an undertaking should only be accepted prior to an H&C decision. After a

positive H&C decision, do not cancel the undertaking, even in the case of a marriage breakdown (see Section 6.8 - *Re-opening the positive H&C decision*).

If the sponsorship is withdrawn before the H&C decision is made

- inform the applicant that the sponsorship has been withdrawn
- give the applicant an opportunity to provide additional information in light of the change of circumstance

make the H&C decision when all relevant facts are available.

> ***Note:*** *It is important that you be sensitive to issues of family violence (see* Section 8.10- *Family violence).*

7.4 Notifying sponsors of appeal rights

Many H&C applicants are sponsored by their close family members (see Section 7- *Sponsorships and Sponsorship Appeal Rights).* They are related to their sponsor in one of the ways described in the definition of member of the family class in subsection R2(1).

When the sponsored H&C applicant receives a positive H&C decision, such sponsored members of the family class become applicants for permanent residence. If the applicant is subsequently refused due to inadmissibility, subsection 77(3) of the *Immigration Act* gives their sponsors the right to appeal this negative decision. The Appeal Division (IAD) of the Immigrant and Refugee Board hears appeals from sponsors.

> ***Note:*** *(1) Sponsors only have appeal rights when the H&C decision was positive and the subsequent application for landing is refused (usually due to inadmissibility). This includes situations where a Minister's permit has been issued and coded as "refused" subsequent to the refusal of the application for landing. See OM OP 98-21 for an in-depth explanation of Minister's permits and appeal rights.*
>
> ***Note:*** *(2) When applications (supported by a sponsorship) are refused at the H&C decision stage, there is no right of appeal. This is because a negative H&C decision only determines that an applicant cannot have an application for landing considered from within Canada. Refusal of an A9(1) waiver is not a refusal of the application for landing itself.*

Subsection 41(2) of the Regulations requires immigration officers to inform sponsors in writing of their right to appeal. The following describes the written notification process to sponsors for all in-Canada refused family class applications for landing, including when the sponsor lives in Quebec. The refusal letter to an applicant cannot and does not replace the notification of appeal rights letter to the sponsor.

Letter to the Sponsor (see APPENDIX D - ANNEX 1)

Notifies of the right to appeal the decision to refuse the Application for landing of the sponsored family class member.

- Include sponsor's client ID number in upper right corner (the eight-digit number from FOSS name query of IMM 1344B Undertaking of Assistance).
- Send by regular mail, usually to sponsor's Canadian address; if sponsor is temporarily outside of Canada, letter may be sent to a non-Canadian address

Attachments to the Letter to the Sponsor

1. Copy of refusal letter sent to the applicant
   - The date on the refusal letter sent to the applicant(s) and the copy sent to the sponsor must be identical.
   - Sign both the original and the copy of the refusal letters.

2. Notice of Appeal form IRB/CISR 428 (2/97) (See NOTICE OF APPEAL FORM [IRB/CISR 428 (2/97)] (See APPENDIX D)
3. Information insert (see APPENDIX A)

7.4.1 Right of Landing Fee (ROLF) refunds

Sponsors who chose not to appeal may request a refund of ROLF; refund application instructions are specified in the letter to the sponsor.

Action by Sponsor

- No appeal; requests ROLF refund from CPC-V
- Sponsor receives ROLF refund but subsequently decides to appeal and the appeal is allowed

Action by Department

- CPC-V processes request; records ROLF refund in the Work In Process (WIP) screen of the CPC system under "Remarks".
- CPC-V requests repayment of ROLF that must be paid before landing can be granted.

7.5 Removal pending an appeal

Note that it is the sponsor who has the right of appeal, not the refused applicant. Further, it is the refusal of the application for landing that is being appealed, not the removal order. Therefore, in such cases, there is no need to delay removal pending the IAD decision. (This is not to be confused with appeals made against removal orders or requests for stays of removal.)

7.6 Preparation of the record

When sponsors submit a notice of appeal, IAD rules require the record to be provided within 180 days. If not provided within the 180 days, the IAD may hear the appeal without it. This could harm the hearing officer's ability to present the best possible case in support of the refusal. It is imperative that you respond quickly to all requests from hearing officers to provide documentation for preparation of the record.

The following chart describes the notification and record preparation processes.

WHEN	THEN
• Sponsor submits notice of appeal to Registrar of the IAD	- Registrar notifies responsible immigration office (that refused the application) that an appeal has been filed; H&C decision-maker must prepare statutory declaration and other documents from the applicant's file pursuant to IAD rule 11(3) for onward transmittal to the hearings officer (see OP 2 Section 15.5.2)
• Hearings officer receives a copy of the notice that appeal has been filed and awaits documentation from the H&C decision-maker	- Must prepare submission known as the record which includes the statutory declaration from the immigration officer

7.6.1 The statutory declaration

A statutory declaration is simply a factual statement and is a substitute for oral testimony.

The statutory declaration for an IAD appeal record must include certain information

- Cite all evidence about the applicant that was part of your assessment.
- Attach as exhibits copies of any evidence supporting your conclusions.
- Outline how information from the applicant related to your final assessment. If this information conflicts with your assessment, explain how it affected your decision not to approve the application for permanent residence.

General guidelines to assist your preparation of the statutory declaration

- Imagine you are being questioned about how you decided that you would not approve the application for permanent residence; provide a straightforward answer
- Avoid using terms someone unfamiliar with your work may not understand.
- Include a statement of your reasoning that led you to the refusal decision.

7.7 Resuming processing if the appeal is allowed

Where an appeal is allowed, the IAD is required to notify the Minister and the person concerned of its decision and the reasons [A77(4)]. The Minister has 15 days to apply for leave for judicial review of the decision.

Where the Minister seeks leave for judicial review, the processing of the application is stayed until the application for leave is disposed of. Where leave is allowed, processing of the application is stayed until the judicial review application is heard and disposed of and all other appeals flowing from that action have been heard and disposed of or the time for filing such appeals has elapsed.

The IAD may allow an appeal because the immigration officer incorrectly interpreted the law, the facts or both. The IAD may also allow an appeal on grounds that compassionate or humanitarian considerations exist. When an appeal is allowed, officers must immediately resume processing of the application. The application must be approved where the sponsor and the applicant meet the requirements of the Act and Regulations, other than those requirements on which the decision of the Appeal Division has been given [A77(5)].

The applicant is in Canada

- Check the Work in Process (WIP) screen of FOSS to ensure that the ROLF has not been refunded. If CPC-V refunded the ROLF, the record of the refund will be in Remarks. You cannot land the applicant until the ROLF is paid.
- Ensure that the admissibility assessments and checks (see section) are still valid and there is no indication of inadmissibility (other than the inadmissibility that led to the first refusal).
- When you are satisfied that the applicant would be admissible (other than the inadmissibility that led to the first refusal), schedule a landing interview.

The applicant is not in Canada

- Send an E-mail to the visa office informing of the IAD decision, including the following information:
  - Client information – name(s), sex, date and place of birth, CLPR, marital status, destination, occupation, client identification number and address.
  - Brief summary of case including the removal date (if applicable) H&C approval date, immigrant category, IAD decision and sponsorship information.
  - Results and dates of any security, criminal and medical checks completed.
  - Details on payment of fees.

- The visa office receiving the message will ensure identity, security, criminal and medical checks have been completed and are still valid
- The applicant pays travel expenses, cost recovery fees and, if applicable, repayment of removal costs (see OP 1, Section 17.7 or OM IS 93-01 for instructions). Where feasible, fees will be paid in Canada on behalf of the applicant by a relative, friend or representative. Where this is not possible the visa office collects the fees.
- If the applicant is admissible (other than the inadmissibility that led to the first refusal), the visa office may issue a Minister's permit and if required, grant Minister's consent. (An immigrant visa cannot be issued as the applicant has applied for and been granted a *visa exemption* which will lead to a grant of landing in Canada.)
- If the applicant is found inadmissible on new grounds or if, for any reason, the visa office is reluctant to issue a Minister's permit, the visa office informs the CIC/CPC-V and a mutually agreed upon decision is made.
- The visa office notifies the CIC/CPC-V when a Permit has been issued and advises the client to contact the CIC/CPC-V upon return to Canada to resume processing.

8 GENERAL CASE TYPES

H&C applications must be reviewed on a case by case basis. Applicants are free to make submissions on any aspect of their personal circumstances that they feel would warrant being granted the exemption requested. Nevertheless, many cases have common elements.

The following guidelines describe some situations where positive discretion may be warranted. They may be helpful when deciding whether the circumstances presented by the applicant are sufficiently compelling to warrant an exemption from A9(1). They will not answer all eventualities nor can they be framed to do so. These guidelines are to assist you in assessing H&C situations. You cannot be restricted by guidelines; you are obliged to consider all the information you have.

Special category codes for H&C applicants in Canada were developed primarily to capture data for non-Family Class H&C applicants. The three-digit numeric codes are listed in Section 12.2 and are available for entry in the special category field on the APL screen in FOSS/CPC systems. It is suggested to enter the applicable special category code at the time the H&C decision is made. When the H&C factors are not described in the general case types that follow, enter OCS (other cases).

8.1 Spouses of Canadian citizens or permanent residents

Regulation 2(1) defines a spouse, with respect to any person, as the party of the opposite sex to whom that person is joined in marriage. Spouses may submit an H&C application on the basis of the marriage relationship either with or without the support of a sponsorship undertaking.

8.1.1 Spouses sponsored as members of the family class

Canada's long-term policy has been facilitation of admission for those spouses in Canada sponsored by their Canadian citizen or permanent resident spouses.

First of all determine

- Has a sponsorship been submitted and approved?

  If so, the applicant is a potential member of the family class and this can be considered as a favourable H&C factor.

Then consider

- Is the marriage genuine? That is, a marriage with the intention of residing permanently with the other spouse and not entered into for the primary purpose of remaining in Canada or gaining admission as a member of the family class. You may wish to consider
  - The legality of the marriage (see OP 2 – Processing Members of the Family Class, Section 5 Spouses).
  - The circumstances and timing of the marriage. For example, did the marriage take place after the applicant was refused a visitor extension or when removal was imminent?
- How long has the couple been in the relationship?
- The religious, social and cultural norms of the applicant's community.
- Previous dealings with the Department that might be relevant.

  For example, a previous marriage of convenience, enforcement action, refused immigration applications, or misrepresentation.
- Any other factors that you believe to be relevant to your decision.

8.1.2 Spouses NOT sponsored as members of the family class
(Special Program Code - SNF)

Lack of a sponsorship does not mean that the exemption request should be refused. This is only one factor to be considered among all of the others.

First consider

- Is the marriage genuine?

  That is, a marriage with the intention of residing permanently with the other spouse and not for the purpose of remaining in Canada or gaining admission as a family class member. See the factors listed in Section 8.1.1 for family class spouses.

Then consider

- Reason for lack of sponsorship in terms of all other aspects. Does the lack of sponsorship reflect on genuineness of the marriage?

  (You will have already verified that lack of sponsorship is not due to lack of information or oversight on the part of the prospective sponsor.)

  It will fall into one of the following three categories:

  - Sponsorship submitted but refused due to ineligibility of the sponsor;
  - Sponsorship not submitted as sponsor self-screened out due to ineligibility;
  - Sponsor unwilling to submit sponsorship

- Does the reason for lack of sponsorship impact on any H&C aspects of the application?
- Are there children born of the relationship?
- Any other factors that you believe to be relevant to your decision.

  Note: *If the H&C decision is positive and there are no A5(2) barriers, the applicant will be landed as an independent immigrant. Provincial approval is required for persons residing in a province with an A108 agreement for selection of persons (see* Section 11.1 - *Applicants residing in the province of Quebec).*

8.2 Common-law and same-sex partners
(Special Category Code - SCL and SSS)

The separation of common-law or same-sex partners who reside together in a genuine conjugal-like relationship is grounds for H&C consideration. As with all applications, cases involving common-law or same-sex relationships must be reviewed on their individual merit.

Consider

- Whether the relationship is bona fide and not one entered into for immigration purposes.
  - How long the relationship has existed.
  - Whether either partner is legally married to another party and, if so, whether there is a legal separation.
  - Any evidence of a pattern of immigration abuse.
- The level of inter-dependency between the partners.
  - Stability of the relationship.
  - Duration of the relationship.

- Whether there are minor children for which the couple are jointly responsible.
- Documentary evidence pertaining to the relationship such as joint bank accounts, joint real estate holdings, other joint property ownership, wills, insurance policies, letters from friends and family.
- Willingness of the Canadian partner to provide support.

- Any other factors that you believe to be relevant to your H&C decision.

Note: *If the H&C decision is positive and there are no A5(2) barriers, the applicant will be landed as an independent immigrant. Provincial approval is required for persons residing in a province with an A108 agreement for selection of persons (see* Section 11.1 - *Applicants residing in the province of Quebec).*

8.3 Dependent children of Canadian citizens or permanent residents

Regulation 2(1) defines dependent daughters or sons as children who are less than 19 years of age and unmarried; if over 19 years or married, continuously enrolled as a full-time students and financially supported by their parents; or dependent upon their parents due to a medical condition.

8.3.1 Dependent children sponsored as members of the family class

As in the case of spouses, Canada's long-term policy has been to facilitate the admission of children within Canada who have been sponsored by their Canadian citizen or permanent resident parent(s).

First of all determine

- Whether a sponsorship has been submitted and approved.

  If so, this means the applicant is a potential family class member. This can be considered as a favourable H&C factor.

Then consider

- Proof of relationship.
- How custody agreements or court decisions, if any, affect your H&C decision.
- Any other factors you believe to be relevant to your H&C decision.

8.3.2 Dependent children NOT sponsored as members of the family class (Special Category Code - DNF)

Lack of a sponsorship does not mean that the exemption request should be refused. This is only one factor to be considered among all of the others.

Consider

- The reason for lack of sponsorship (You will have already verified that the lack of sponsorship was not due to lack of information or an oversight on the part of the prospective sponsor).

  It will fall into one of the following three categories:

  - sponsorship submitted but refused due to ineligibility of the sponsor
  - sponsorship not submitted as sponsor self-screened out due to ineligibility
  - sponsor unwilling to submit sponsorship.
- Proof of relationship
- Does the reason for lack of sponsorship impact on any H&C aspects of the application?
- How custody agreements or court decisions, if any, affect your H&C decision.

- Any other factors you believe to be relevant to your H&C decision.

Note: *If the H&C decision is positive and there are no A5(2) barriers, the applicant will be landed as an independent immigrant. Provincial approval is required for persons residing in a province with an A108 agreement for selection of persons (see* Section 11.1 - *Applicants residing in the province of Quebec).*

8.4 Parents and grandparents of Canadian citizens or permanent residents

Regulation 2(1) defines parents and grandparents of Canadian citizen or permanent resident sponsors as family class members. They may submit an H&C application either with or without the support of a sponsorship undertaking.

8.4.1 Parents and grandparents sponsored as members of the family class

First of all determine

- Whether a sponsorship has been submitted and approved. If so, this means the applicant is a potential family class member.

Then consider

- Proof of relationship.
- What hardship would occur if the application for a visa exemption were refused.
- Information the applicant provided to a visa office when obtaining a visitor visa, if applicable.
- The level of interdependency.
  - Support available in home country (other family members)
  - Whether the applicant is able to work.
- Is there a significant degree of establishment in Canada? (see Section 6.2 – *General establishment guidelines*)
- Any other factors that you believe to be relevant to your H&C decision.

8.4.2 Parents and grandparents NOT sponsored as members of the family class (Special Category Code - PNF)

Lack of a sponsorship does not mean that the exemption request should be refused. This is only one factor to be considered among all of the others.

Consider

- The reason for lack of sponsorship in terms of all other aspects of the application. (You will have already verified that lack of sponsorship is not due to lack of information or oversight on the part of the prospective sponsor.)

  It will fall into one of the following three categories:

  - Sponsorship submitted but refused due to ineligibility of the sponsor.
  - Sponsorship not submitted as sponsor self-screened out due to ineligibility.
  - Sponsor unwilling to submit sponsorship.
- Proof of relationship.
- What hardship would occur if the application for a visa exemption were refused.
- Information the applicant provided to a visa office when obtaining a visitor visa, if applicable.
- Does the reason for lack of sponsorship impact on any H&C aspects of the application?

- The level of interdependency.
  - Support available in home country (other family members)
  - Whether the applicant is able to work.
- Is there a significant degree of establishment in Canada? (see Section 6.2 – *General establishment guidelines*)
- Any other factors that you believe to be relevant to your H&C decision.

Note: *If the H&C decision is positive and there are no A5(2) barriers, the applicant will be landed as an independent immigrant. Provincial approval is required for persons residing in a province with an A108 agreement for selection of persons (see* Section 11.1 - *Applicants residing in the province of Quebec).*

8.5 Separation of parents and dependent children (outside of the family class)

(Special Category Code - SOF)

The removal of a status-less individual from Canada may have an impact in relation to family members who do have the legal right to remain (i.e., permanent residents or Canadian citizens). The geographic separation of family members could create a hardship that may warrant a positive H&C decision. Other than his or her spouse or partner (see Section 8.1 and Section 8.2 dealing with spouses and common-law, same-sex partners) the status-less individual's family members with legal status may include children, parents and siblings, among others.

In evaluating such cases, you should balance the different and important interests at stake:

- Canada's interest (in light of the legislative objective to maintain and protect the health, safety and good order of Canadian society)
- family interests (in light of the legislative objective to facilitate family reunification)
- the circumstances of all the family members, with particular attention given to the interests and situation of the status-less individual's children.

The applicant's submissions may be considered in light of international human rights standards such as the *International Covenant on Civil and Political Rights*, the *American Declaration on the Rights and Duties of Man*, and the *Convention on the Rights of the Child*. International case law suggests that the State's interests in protecting society and regulating immigration are to be weighed or balanced in relation to the interests of the individual facing removal and the impact of this removal on his/her family members.

Adult applicants may present submissions from, or on behalf of, members of their family, setting out the family members' views. For children, such submissions should be considered in accordance with the children's age and maturity, recognizing the increasing capacity of a child as he/she matures, to present his/her own views.

As in all H&C cases, consider the degree of hardship in relation to the applicant's personal circumstances (see Section 6.1 – *What is meant by "humanitarian or compassionate grounds"*).

Consider

- The links with the applicant's country of origin.

  (*e.g.*, amount of time resident in his/her country of origin, ability to speak language, return visits since arrival in Canada, family members remaining in the country of origin)

- The links of family members to the applicant's country of origin, if applicable.

  (e.g., amount of time spent in applicant's country of origin, ability to speak language of applicant's country of origin, other family members in applicant's country of origin)

- The degree of establishment in Canada

  (see Section 6.2 - *General establishment guidelines*).

- Current immigration or citizenship status of each member of the family.

- The applicant's immigration status at the time the family links were formed.

  (*i.e.* status at time of marriage, of having children)

- If the applicant's immigration status was lost after the family links were formed, what was the original status (*e.g.*, visitor, permanent resident) and under what circumstances was status lost.

- What are the effective links with family members (children, spouse, parents, siblings, *etc.*) in terms of ongoing relationship as opposed to simple biological fact of relationship

  - Where the applicant is residing in relation to the family members, particularly his/her children.

  - If there has been any previous period of separation, for how long and why.

  - If the applicant and his/her spouse are separated or divorced, has there been a court order in relation to custody arrangements? If the applicant is the non-custodial parent, has s/he been exercising any visitation rights? What do the materials filed with the family court indicate about the family's circumstances?

  - Degree of psychological / emotional support in relation to other family members.

- Options for the family to be together in another country or possibility to maintain contact.

- Impact on family members, especially children, if the applicant is deported.

  - Particular circumstances of the applicant's child (age, needs, health, emotional development).

  - Financial dependence involved in the family ties.

- Any other factors that you believe to be relevant to your H&C decision.

  Note: *If the H&C decision is positive and there are no A5(2) barriers, the applicant will be landed as an independent immigrant. Provincial approval is required for persons residing in a province with an A108 agreement for selection of persons (see* Section 11.1 - *Applicants residing in the province of Quebec).*

8.6 De facto family members

(Special Category Code - DFM)

De facto family members are persons who do not meet the definition of a family class member. They are, however, in a situation of dependence that makes them a de facto member of a nuclear family in Canada. Some examples: a son, daughter, brother or sister left alone in the country of origin without family of his/her own; an elderly relative such as an aunt or uncle or an unrelated person who has resided with the family for a long time.

An important consideration is to what extent the applicant would have difficulty in meeting financial or emotional needs without the support and assistance of the family

unit in Canada. Separation of persons in such a genuine relationship may be grounds for a positive decision.

Consider

- Whether dependency is bona fide and not created for immigration purposes.
- The level of dependency.
  - The stability of the relationship
  - The length of the relationship
  - Ability and willingness of the family in Canada to provide support
  - Applicant's other alternatives, such as family (spouse, children, parents, siblings, etc.) outside Canada able and willing to provide support
  - Documentary evidence about the relationship (e.g. joint bank accounts or real estate holdings, other joint property ownership, wills, insurance policies, letters from friends and family).
- Is there a significant degree of establishment in Canada? (see Section 6.2 – *General establishment guidelines*)
- Any other factors that you believe to be relevant to your H&C decision.

Note: *If the H&C decision is positive and there are no A5(2) barriers, the applicant will be landed as an independent immigrant. Provincial approval is required for persons residing in a province with an A108 agreement for selection of persons (see* Section 11.1 - *Applicants residing in the province of Quebec).*

8.7 Prolonged inability to leave Canada has led to establishment
(Special Category Code - PIL)

Positive consideration may be warranted when the applicant has been in Canada for a significant period of time due to **circumstances beyond his or her control**.

For example, where general country conditions are considered unsafe due to war, civil unrest, etc., the Department may temporarily suspend removals to that country; when the conditions improve, removals can resume. However, situations may arise where suspension of removals continues for a number of years and there is no other viable destination option for the applicant. Where it is unlikely that conditions will improve soon and the situation of no alternative destination option continues, this could be considered a hardship due to circumstances beyond the applicant's control.

On the other hand, consider an applicant in Canada for a number of years who is unwilling to sign a passport application or provide particulars for a passport application; such behaviour could be viewed as a very strong negative factor. In such a case, inability to leave Canada would not be considered as beyond control of the applicant and could be viewed as a very strong negative factor.

When the period of inability to leave due to circumstances beyond the applicant's control is of **significant duration** and where there is evidence of **a significant degree of establishment in Canada,** these factors may combine to warrant a favourable H&C decision.

There is no hard and fast rule relating to the period of time in Canada but it is expected that a significant degree of establishment would take several years to achieve.

These applicants may or may not be the subject of a removal order, may or may not have had a negative refugee determination and/or post-claim review.

Consider

- Are the circumstances that led to the applicant remaining in Canada of significant duration and beyond his or her control?
  - Contact the local removals unit to determine if an applicant is in Canada because of a temporary suspension of removals to their country and whether there is another viable destination option
- Is there a significant degree of establishment in Canada? (see Section 6.2 - *General establishment guidelines*)
- To what degree has the applicant co-operated with the Department, particularly with regard to travel documents?
  - When no valid travel or identity document has been provided, contact the local removals unit to determine whether this is due to an applicant's unwillingness to complete a passport application.
  - Did the applicant willfully lose or destroy travel documents?
- Any other factors that you believe to be relevant to your H&C decision.

  Note: *If the H&C decision is positive and there are no A5(2) barriers, the applicant will be landed as an independent immigrant. Provincial approval is required for persons residing in a province with an A108 agreement for selection of persons (see* Section 11.1 - *Applicants residing in the province of Quebec).*

8.8 Personalized risk

(Special Category Code - PZR)

Positive consideration may be warranted for persons who would face an objectively identifiable personalized risk if removed from Canada. The risk may be to the applicant's life or it may involve severe sanctions such as unwarranted imprisonment or inhumane treatment such as torture. There are varying degrees of risk. Generally, the risk should be greater than a mere possibility and yet may be less than a "balance of probabilities".

First of all:

- Review the application and consider all the information presented by the applicant.
- If non-risk H&C factors are present and they are sufficient to warrant approval of the application, there is no need to examine risk; approve the H&C request and continue processing in the usual manner.
- If non-risk H&C factors are present and they are not sufficient, on their own, to warrant approval of the application, send the application to a Post-Claims Determination Officer (PCDO) for review.
- When an applicant does not detail the nature of the risk, (e.g. simply states " I fear personalized risk if removed from Canada"), obtain further details from the applicant before sending the file to the PCDO. Use the Annex 3 letter in Chapter IP-5; it includes information about the consequences of not providing information within the time specified. If the applicant does not respond, continue processing of the file based on the information before you (referral to a PCDO may not be required in the absence of specific risk concerns).

Role of PCDO

The PCDO is the departmental expert in matters of risk. Upon receiving an H&C application with elements of risk, the PCDO will consider all aspects of risk as put forth by the applicant and take into account the standards set out in the Charter and international human rights treaties (e.g. *International Covenant on Civil and Political Rights,*

the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* and the *American Declaration on the Rights and Duties of Man).* The PCDO may also consider, but is not limited to, reports from international organizations on country conditions, news clippings and evidence of torture or abuse such as medical reports.

PCDO - Processing Steps

- The PCDO will compare the applicant's submission with available information and prepare a risk *opinion or assessment.*
- When this risk opinion or assessment is negative, that is, there is no risk identified, the PCDO will provide a copy of the report to the applicant asking for comments on any errors or omissions (see sample letter, APPENDIX A - ANNEX 1). **It is very important to note that this is an opportunity for the applicant to draw attention to alleged errors or omission in the PCDO report; it is not an invitation for applicants to re-argue their case.**
- After 15 calendar days (plus 7 days to allow for mailing), the PCDO will retrieve the application and take into account any submissions received from the applicant.
- Notes will be added to the original report commenting on whether a submission was received and, if so, whether they are such that the original negative opinion must be re-considered.
- PCDOs will then send to the H&C decision-maker the original negative risk opinion, any submission received by the applicant, and their comments on submissions received.

When the application is returned from the PCDO:

- Review and consider all information provided by the applicant.
- Review and consider all information available regarding the applicant (previous immigration applications, refugee claims, PDRCC determinations, etc)
- Review the risk opinion from the PCDO along with any submission received from the applicant.
- Consider all the information before you, including other factors that you believe to be relevant to your H&C decision.
- Remember that a negative risk opinion does not necessarily result in a negative H&C decision. The PCDO opinion is one factor to consider in light of all of the circumstances of the individual case. In all cases, you are the H&C decision-maker and the H&C decision must be your own.

> ***Note:*** *If the H&C decision is positive and there are no A5(2) barriers, the applicant will be landed as an independent immigrant. For applicants residing in Quebec, see* Section 11.1 - *Applicants residing in the province of Quebec).*

8.9 Refugees who apply for landing too late

(Special Category Code - RAL)

Some persons who were determined by the IRB to be Convention refugees, submit their application for landing after the expiry of the 180-day filing period under A46.04(8) [see R40]. In such cases, you may consider an **IMM 5202 – Convention refugee application for permanent residence form** as an application under R2.1. Generally, these applications will warrant favourable consideration.

These applications are not subject to a second processing fee, nor the Right of Landing Fee.

First of all

- Verify that the applicant was determined to be a Convention refugee and that the 180-day filing period has expired.

Then

- Examine the reason(s) why the application was not submitted within the 180-day filing period.

The following examples would likely support a positive H&C decision:

- a delay due to language barrier,
- inability to pay cost recovery processing fees, or
- the applicant's failure to recognize the importance of filing within 180 days.

The following would warrant further examination:

- a delay due to the applicant's return to the country of persecution as stated in the refugee claim.

- If the H&C decision is positive, commence processing of the application for permanent residence in the normal manner. These applicants, like other immigrants, must be able to prove their identity and must normally have a passport as required by R14(1). Although they do not lose their status as Convention refugees, they do not benefit from the more generous eligibility and admissibility criteria afforded under A46.04. For example, there is no exemption from the requirement to pass medical examination; and there is no concurrent processing for dependents abroad (rather, they must be sponsored after landing). APPENDIX A - ANNEX 7 is a modification of the former APPENDIX A - ANNEX 7 – *H&C Decision Positive - No Known A5(2) Barriers* that also informs these applicants about the differences in H&C processing and A46.04 processing.

  Note: *Provincial approval is not required for persons residing in Quebec. This is because the applicants retain their Convention refugee status notwithstanding the processing of their application under H&C provisions.*

- If referral to the Board for cessation or vacation of Convention refugee status is an appropriate course of action, the H&C decision should be postponed until the outcome of the Board's proceedings are known.

8.10 Family violence

(Special Category Code - FMV)

Family members in Canada, particularly spouses, who are in abusive relationships and are not permanent residents or Canadian citizens, may feel compelled to stay in the relationship or abusive situation in order to remain in Canada; this could put them at risk.

Officers are reminded to consider using their positive discretionary authority where the spouse (or other family member) of a Canadian citizen or permanent resident leaves an abusive situation and, as a result, does not have an approved sponsorship.

Note that women are most often the victims of spousal abuse. An important consideration is the protection of the person being abused.

Consider

- Information indicating there was abuse such as police incident reports, charges or convictions, reports from shelters for abused women, medical reports, etc.
- Is there a significant degree of establishment in Canada? (see Section 6.2 - *General establishment guidelines*)
- The hardship that would result if the applicant had to leave Canada.

- the customs and culture in the applicant's country of origin
- support of relatives and friends in the applicant's home country
- whether the applicant is pregnant
- whether the applicant has a child in Canada
- the length of time in Canada
- whether the marriage or relationship was genuine

- Any other factors that you believe to be relevant to your H&C decision.

Note: *If the H&C decision is positive and there are no A5(2) barriers and if there is no existing sponsorship, the applicant will be landed as an independent immigrant. Provincial approval is required for persons residing in a province with an A108 agreement for selection of persons (see* Section 11.1 - *Applicants residing in the province of Quebec).*

8.11 Former Canadian citizens
(Special Category Code - FCC)

Situations may arise where former Canadian citizens request landing on H&C grounds. As with all applications, cases involving former Canadian citizens must be considered on their individual merit. Although not exhaustive, the following guidelines may be helpful.

First of all

- Make sure the applicant was a Canadian citizen and that loss of citizenship has occurred.
  - The applicant should contact CPC Sydney to obtain written confirmation.

Consider

- Why and how the applicant lost his or her Canadian citizenship and verify if he or she would have lost it under the present Act.
- Assess the hardship that the applicant would experience if the application were refused.
  - close family members in Canada
  - strong cultural and/or emotional ties to Canada
  - close family, friends and support in another country.
- Is there a significant degree of establishment in Canada? (see Section 6.2 – *General establishment guidelines*)
- Any other factors that you believe to be relevant to your H&C decision.

Note: *If the H&C decision is positive and there are no A5(2) barriers, the applicant will be landed as an independent immigrant. Provincial approval is required for persons residing in a province with an A108 agreement for selection of persons (see* Section 11.1 - *Applicants residing in the province of Quebec).*

8.12 Other cases

(Special Program Code - OCS)

As stated in the introduction to this section, the listing of general case types cannot answer all eventualities and they are not framed to do so. Reasons for granting a positive H&C decision will occur outside of the general case types described. A review of Section 6.2 – *General establishment guidelines* may be helpful.

Note: *If the H&C decision is positive and there are no A5(2) barriers, the applicant will be landed as an independent immigrant. Provincial approval is required for persons residing in a province with an A108 agreement for selection of persons (see* Section 11.1 - *Applicants residing in the province of Quebec).*

9 ASSESSING ADMISSIBILITY

After a positive H&C decision, processing of the application for landing begins to determine whether the applicant is admissible and meets all requirements of the Act and Regulations.

9.1 Known inadmissibility

Other than inadmissibility for A19(1)(b), when there is a known inadmissibility at the time of the positive H&C decision

- the application for permanent residence must be refused (see APPENDIX C - ANNEX 11)
- an A27 report must be completed and forwarded to the Deputy Minister's delegate with a disposition recommendation
  - if you are considering recommending a Minister's permit, refer to the guidelines in OM IP 95-07 and manual chapter IP-12 - *Ministers Permits*
  - for guidelines on A27 reports and recommending dispositions, see manual chapter EC-9
- if the applicant was sponsored, see Section 7.4 - *Notifying sponsors of appeal rights.*

When the inadmissibility is A19(1)(b), APPENDIX A - ANNEX 5 confirms the positive H&C decision and outlines the consequence of relying on social assistance. The final determination of 19(1)(b) is made at the end of the application process to allow the applicant to take advantage of employment opportunities that come with the positive H&C decision and an employment authorization.

9.2 When checks are initiated

After a positive H&C decision is made and no inadmissibility is apparent, then applicants and their dependants in Canada listed on the IMM 5001 undergo medical, background and criminal checks as part of the admissibility assessment.

9.3 Overseas dependants

The admissibility of overseas dependants is not a consideration when assessing admissibility of applicants in Canada who have received a positive H&C decision. An inadmissible dependant outside Canada does not render the principal applicant in Canada inadmissible. Unlike requirements for issuing an immigrant visa or the landing requirements for a member of the Live-in Caregiver Class, there is no requirement in A5(2) for admissibility of overseas dependants of H&C applicants in Canada. Therefore, overseas dependants are not required to undergo medical, background or criminal checks as a prerequisite to landing the principal applicant in Canada.

9.4 Medical assessment

If a medical examination has not already been completed, provide the applicant and any dependants in Canada with a letter informing them to report to a DMP for a medical examination. Medical Officers interpret the results and enter their assessment directly into FOSS.

9.5 Validity of medical assessments

Applicants who enter Canada within the validity of an immigration medical examination or who have passed an immigration medical examination (originally assessed as M1 or M2) since arriving in Canada do not normally require a new examination. For M3 cases, referral to Immigration Health Services (RNH) may be required. A medical assessment of M4 to M7 does not expire. Refer to OM IS 95-18 for further details on the validity of medicals and procedures to be followed.

9.6 Background and security checks

The Canadian Security Intelligence Service (CSIS) performs security screening and the Royal Canadian Mounted Police (RCMP) conduct screening for criminal records on behalf of Citizenship and Immigration Canada. The IMM 0703 (Request for Screening Action) is the form used to initiate both of these screening procedures. Instructions for submission of the IMM 0703 are found in IC 1 and include addresses where applicants may write to obtain police certificates.

9.7 Information suggesting inadmissibility

Information on inadmissibility may come from the applicant (intrinsic information) or from some other source (extrinsic information). When relying on information from someone other than the applicant, procedural fairness requires that you inform the applicant, providing an opportunity to respond before making your decision. APPENDIX C - ANNEX 2 can be used when it appears that the admissibility decision will be negative due to such evidence.

> ***Note:*** *The medical officers' opinions are considered extrinsic information (also see* Section 9.5 - *Validity of medical assessments). Therefore, when an applicant or any dependent is the subject of a medically inadmissible opinion, you must inform the applicant and give him or her an opportunity to make submissions (also see OM IP 96-08).*

9.8 Criminal charges formally laid and still outstanding

Where criminal charges against the applicant are outstanding and his/her case is otherwise "ready for landing", delay scheduling of the landing appointment until there is a final disposition of the criminal charges. Where information regarding outstanding criminal charges comes to light at the landing interview, note the information and postpone or reschedule the landing interview until there is a final disposition of the criminal charges. This is so that an informed and appropriate A5(2) decision can be made.

Such delays are justifiable and prudent as a conviction may make the applicant criminally inadmissible and ineligible for landing.

9.9 Applicants under a removal order

After a favourable H&C decision, existence of a removal order is not a barrier to landing unless it is related to inadmissibility. There is no need to effect the removal order and allow the applicant to return to Canada with a Minister's permit. As long as the applicant is admissible, landing may take place notwithstanding a removal order. Upon granting landing, the removal order has no effect.

If, however, an applicant under a removal order leaves Canada while his/her application is being processed, he/she has no guarantee of being re-admitted to Canada.

In such cases, the following paragraph should be added to APPENDIX A - ANNEX 2:

> "As you are the subject of a deportation/exclusion order, if you leave Canada you may not return to Canada (in the case of exclusion order: for a period of one year from the date you left Canada) without first obtaining the consent of the Minister".

9.10 Positive H&C decision following removal

Applicants receiving a positive H&C decision after removal and not otherwise inadmissible, will be allowed to return to Canada.

When a positive H&C decision is made after removal of the applicant

- CIC/CPCV sends an E-mail to the visa office informing that a positive H&C decision was made.

The message will include the following details

- Client information including, name(s), sex, date and place of birth, CLPR, marital status, destination, occupation, client identification number and address.
- A brief summary of the case including the removal date, H&C approval date, immigrant category and sponsorship information, if applicable.
- Security, criminal and medical results, if available.
- Specific details on the payment of fees.

- The visa office receives this message and verifies that identity, security, criminal and medical checks have been completed and are valid.
- The visa office does not re-evaluate the original H&C decision.
- The applicant is responsible for any travel expenses, cost recovery fees and, if applicable (see OP 1, Section 17.7 or OM IS 93-01 for instructions), repayment of removal costs. Where feasible, fees are paid in Canada by a relative, friend or representative on behalf of the applicant. Where this is not possible, the visa office collects the fees.
- If the applicant is admissible, the visa office may issue a Minister's permit and if required, grant Minister's consent (an immigrant visa cannot be issued as the applicant has applied for and been granted a *visa exemption* which will lead to a grant of landing in Canada).
- The Visa office notifies the CIC/CPC-V when a Permit has been issued and advises the client to contact the CIC/CPC-V upon return to Canada so that processing can resume.
- Where the applicant is found inadmissible or if, for any reason,the Visa office is reluctant to issue a Minister's permit, the Visa office will inform the CIC/CPC-V and a mutually agreed decision should be made.

9.11 Applicant and any dependent in Canada appear to be admissible

After the results of medical examination, background and security checks have been received and no inadmissibility is apparent, an invitation for landing letter is sent. (see APPENDIX C - ANNEX 9)

9.12 Principal applicant (or dependent in Canada) is inadmissible

Where the principal applicant (or dependent in Canada) is inadmissible

- The application for permanent residence for the applicant and all family members must be refused. (see APPENDIX C - ANNEX 3 and 8)
- An A27 report must be completed and forwarded to the Deputy Minister's delegate with a recommendation for its disposition
  - If you are considering recommending a Minister's permit, refer to the guidelines in OM IP 95-07 and Chapter IP 12 *Minister's Permits*

    Note: *It is very important that the coding you enter on the permit reflects the code for "refused" and* **not** *the code for "under application".*
  - For guidelines on A27 reports and recommending dispositions, see Chapter EC 9.
- If the applicant was sponsored, see Section 7.4 – *Notifying sponsors of appeal rights.*
- If you have reason to believe that the applicant provided false information in response to the health, criminality or security questions in section L of the

IMM 5001 there is a possibility that the H&C decision should be revisited (see Section 6.8 - *Re-opening of positive H&C decision*).

9.13 Waiver of passport requirement [R14(1)]

Subsection R14(1) requires all immigrants to be in possession of a valid and subsisting passport in order to be landed. A valid and subsisting passport is a relatively good confirmation of identity. Most countries carefully verify an applicant's identity before issuing a passport that grants a person the right to enter that country. Issuing governments are often in a better position to verify identity documents than Canadian immigration officers.

It is expected that all immigrants will be in possession of a valid and subsisting passport and that exceptions to this will not occur frequently. Applicants who are unable to obtain a passport should provide evidence that they have applied for one and have been refused. To facilitate this, give them a letter to send to their Embassy that requests written reason(s) for refusing to issue a passport. Applicants should have the letter double registered to ensure it is received. This may discourage persons seeking a passport waiver because they are wanted in their country for criminal or other activities. However, some embassies refuse to provide reasons for not issuing a passport.

Consider all of the individual facts of the case. Are you satisfied that there is a valid reason for not having a valid passport? Is the applicant in possession of another identity document that pre-dates his or her arrival in Canada? If so, you may wish to waive the passport requirement when applicants cannot obtain a passport from their government and you are satisfied of their identity.

Before deciding that the applicant cannot obtain a passport, consult with the local removals unit or with the Investigations and Removals section at NHQ. They will give an opinion concerning whether it is possible for a person in the applicant's situation to obtain a passport.

Where an exemption from the passport requirement is warranted, insert the following as a remark in FOSS/CPS and send a letter to the applicant containing the following statement:

> "I hereby grant an exemption from subsection 9(1) of the *Immigration Act* and subsection 14(1) of the *Immigration Regulations* on behalf of [name of person(s)]."

9.14 Inadmissibility for A19(1)(b) – social assistance

There may be occasions when an applicant receives a positive H&C decision notwithstanding reliance on social assistance or becomes dependent upon social assistance after the H&C decision. Unlike other grounds of inadmissibility, do not refuse the application immediately. The dependency on social assistance could be a temporary situation or a result of not having been authorized to work in Canada. By the time the application is processed and otherwise ready for landing, the applicant may have become self-sufficient and, therefore, eligible for landing.

Sample letters at the end of this chapter advise applicants at every opportunity that receipt of social assistance will result in refusal of the application for permanent residence.

When all other admissibility criteria are met, verify 19(1)(b) inadmissibility either by scheduling a landing interview and making a final determination in person or by asking the applicant to provide evidence that they are no longer in receipt of social assistance (see APPENDIX C - ANNEX 11).

If the applicant is still in receipt of social assistance after all other processing has been concluded, the application for permanent residence must be refused (see APPENDIX C - ANNEX 3, 6, 8 and 10); however, if it appears that the applicant may be self-supporting in the near future, the landing decision may be delayed for a short period of time until evidence of self-sufficiency can be provided.

10 INTERIM DOCUMENTATION

Applicants who have received a positive H&C decision are eligible for interim documentation pending the finalization of their application as indicated in the following sections.

10.1 Visitor status

Visitor status may be extended as long as there is no known inadmissibility. An extension of one year should be sufficient.

Applicants who are out of status are reported under the applicable paragraph(s) of A27(2). Where loss of visitor status is described under A26(1)(a) to (c), a recommendation for reinstatement of their visitor status under A27(2.1) should be made (also see Chapter IP 6 *Processing Visitor Extensions*).

10.2 Minister's permits

Some applicants may have already been issued a Minister's permit. For example, persons who were reported at a port of entry under section A20 or who entered Canada as crew members and failed to comply with the requirements. If no permit was issued, recommendation for issuance of a permit may be appropriate. Permits and extensions should be issued for one year when there are no new or additional grounds of inadmissibility (also see Chapter IP 12 *Minister's Permits* and OMs IP 95-07, IP 98-06 for guidelines on the use of Minister's permits).

> ***Note:*** *Persons who are under a removal order are neither eligible for reinstatement [A27(2.1)] nor a Minister's permit [A37(2)]. They will remain without status until a decision is made on their application for permanent residence (see* Section 9.9 - *Applicants under a removal order).*

10.3 Employment authorizations

Employment authorizations are issued pursuant to R19(4)(i). Applicants must request an employment authorization by completing a form IMM 1249 - "*Application to Change Terms and Conditions or Extend my Stay in Canada*" (also see Chapter IP 7 Processing Employment Authorizations in Canada).

> ***Note:*** *Employment authorizations for applicants who have received a positive H&C decision are validation exempt [R20(5)(a)]. However, until the medical examination has been passed, employment must be restricted to jobs where protection of public health is not essential. An open employment authorization allowing any work for any employer may be issued when the applicant passes an immigration medical examination.*

10.4 Student authorizations

Student authorizations are issued pursuant to R16(b). There is no specific provision to allow applicants for landing to apply for Student Authorizations in Canada. However, taking of courses is incidental and secondary to their main purpose in Canada, which is to obtain permanent residence. Applicants must request a student authorization by completing the IMM 1249 - "***Application to Change Terms and Conditions or Extend my Stay in Canada***". (also see Chapter IP 8, Processing Student Authorizations in Canada).

11 PROCESSING THE APPLICATION FOR LANDING

11.1 Applicants residing in the province of Quebec

Provincial approval is required for H&C applications for applicants who

- are independent immigrants, and
- will be living in a province that has entered into an agreement (A108) giving it sole responsibility for the selection of some classes of immigrants [A114(3)]. Quebec is the only province that currently has such an agreement.

WHEN	THEN
• An applicant residing in the province of Quebec receives a positive H&C decision **Note:** It is not necessary to contact MRCI for negative H&C decisions.	- Forward a copy of the IMM 5001 and IMM 5283 or IMM 5285 Supplementary Information Form to the ministère des Relations avec les citoyens et de l'Immigration (MRCI); await a CSQ.
• MRCI does not issue a CSQ	- The applicant may choose to live in another province outside of Quebec.
• MRCI does not issue a CSQ and applicant does not move	- The application must be refused under A5(2) as there is no CSQ.
• The applicant moves to another province	- Local CIC in that area finalizes the case. - Local CIC does not revisit the initial H&C decision (except if there is evidence of misrepresentation or fraud).

11.2 Dependants residing abroad

There is no requirement for overseas dependants to be examined (see Section 6.6 – *Known or suspected inadmissibility of dependents abroad* and Section 9.3- *Overseas dependents*). This is because the requirement to determine the admissibility of dependents, whether accompanying or not, is a requirement of the Regulations in conjunction with the issuance of a visa; applicants who have received a positive H&C decision have been exempted from the requirement to obtain a visa.

11.3 Decision-maker requires further information

WHEN	THEN
• Additional documents or information are requested in writing See APPENDIX A - ANNEX 3 and 6 APPENDIX B - ANNEX 1 APPENDIX B - ANNEX 2	The letter should include - a description of information or documents required - the period of time allowed for response **Note:** This period should correspond to the length of time you expect it will take for the applicant to obtain the information, or you may wish to allow a shorter period of time and ask the applicant to provide evidence of having taken steps to obtain the requested information. - Information about the consequences of not providing requested information or responding within the specified period - an opportunity for the applicant to request an extension of the specified period of time for response.
• Applicant requests more time to respond	- Grant a reasonable extension period based on the reasons given by the applicant for the request.

11.4 Information received after specified response time has elapsed

SUBMISSION ARRIVES LATE	THEN
• And refusal letter has already been sent to the applicant (decision has already been made on the basis of information on file)	- Department has no authority to re-open a negative decision. - Remind the applicant that a specified period of time had been provided for response, that, in fact, XX days elapsed with no submissions received and, as stated previously, a decision was made based on information on file. - Applicants wishing to have new information considered must submit a new application, including new fees.
• And no decision has yet been made (e.g. reply period was 30 days, submission arrives in 40 days, and file is being reviewed 50 days from date of letter requesting submissions)	- Decision is made based on available information at that time, including the late submission; there is no "penalty" to the applicant.

11.5 Loss of contact with the applicant

WHEN	THEN
• Correspondence is returned due to an invalid address	- Check that the most recent address on file was used and that there were no transposition errors for street or apartment numbers or the postal code.
• An applicant does not respond to requests for information, fails to provide an updated address or fails to appear for landing interview	- There is no provision to "close" an application; the application must be processed through to a decision, that is, either approval or refusal. - A decision can be taken based on information on file as long as previous correspondence has informed the applicant of how and when to reply and included the consequences of failing to respond (see APPENDIX A - Sample letters).

Note to file any attempts to verify the applicant's current address such as looking in the local telephone directory, calling the most recent telephone number provided on the application form or calling other persons listed as contacts or representatives.

11.6 Applicant leaves Canada after positive H&C decision

The positive H&C decision letter to applicants should include information about consequences of leaving Canada prior to landing (see APPENDIX A - ANNEX 2). For example

> "Your exemption from the requirement to obtain your immigrant visa from outside Canada was based, in part, on the hardship of having to leave Canada and apply from outside of the country as is usually required. **If you decide to leave Canada, there is no guarantee that you will be re-admitted for the purpose of continuing with this application.**"

Guidelines for port of entry examining officers inform that there is no requirement to re-admit applicants who have received a positive H&C decision and are seeking to return to Canada to finalize the application. However, where such applicants are admissible, re-entry may be facilitated by the issuance of a visitor record until the anticipated date of landing (see Chapter PE 6, Section 3.5 for complete guidelines).

12 LANDING

12.1 Checklist prior to landing

Before preparing the IMM 1000 Record of Landing for applicant (and any dependents in Canada) verify

Medical results

See Section 9.5 - *Validity of medical assessments.*

Security results

Valid for one year from the date of the CSIS decision. Case-by-case extensions may be requested by returning the file copy of the IMM 0703 (see IC 1).

Criminal checks

Have no specific validity date; check FOSS for information about recent charges or convictions before landing. If one year has elapsed from the time of the criminal check, or whenever warranted, a new CPIC check is recommended.

CSQ

If required, ensure you have one.

12.2 Case identifier codes

NHQ, RHQ or the local office may monitor decisions to

- identify the types of applications made
- ensure that delegated authority is exercised in a fair and consistent manner, and
- identify training needs.

Using the new coding

- The three-digit numeric codes from the list that follows will be available for entry in the special category field on the APL screen in FOSS/CPC system.
- Chose and input the special category code at the same time the H&C (Step One) decision is made.
- When H&C factors are not described in the general case types section, use code OCS – Other cases.

WHEN IMMIGRANT CATEGORY IS	AND H&C SUFFICIENT (Step One = Approved)	AND H&C INSUFFICIENT (Step One = Refused)
ND	Use the special category code that best describes the predominant reason for approving the application. Where a combination of reasons were considered, use the code that best describes the most significant reason for approval. e.g. An independent applicant has strong ties to Canada as the parent of a Canadian citizen. A sponsorship was not approved because the sponsor could not meet LICO. Family ties developed over several years while the applicant remained in Canada and could not return home due to the unsettled situation in his country. Chose either of code PNF or PIL, whichever you feel has more weight, even if it is only the difference between 51% and 49%.	Use the special category code that best describes the circumstances presented by the applicant. Where a number of factors were given, use the code that best describes the predominant reason put forth by the applicant. e.g. An independent applicant described strong ties to Canada as the parent of a Canadian citizen. No sponsorship was submitted. Contact with the potential sponsor did not support the applicant's information. The applicant did not give satisfactory explanations. A claim to remain based on personalized risk was found to be unsubstantiated. Chose either of code PNF or PZR, whichever was presented more strongly by the applicant, even if it is only the difference between 51% and 49%.

WHEN IMMIGRANT CATEGORY IS	AND H&C SUFFICIENT (Step One = Approved)	AND H&C INSUFFICIENT (Step One = Refused)
FC	Only enter a special program code if there was another very significant factor that was considered in the approval decision. Leave the special program code blank when approval was predominantly because of the family class relationship supported by an undertaking. e.g., In reviewing genuineness of the marriage,applicant's information indicates that she has been in Canada as a failed refugee claimant for several years. Also, there has been a suspension of removals to her home country during that time. You concluded that the marriage is genuine and that there is also merit in approval due to a prolonged inability to leave Canada having led to establishment. In this spousal case, it would be appropriate to use special program code PIL.	Only enter a special program code if there was another very significant factor presented by the applicant. Leave the special program code blank when the primary H&C factors presented were a family class relationship supported by an undertaking. e.g., Refusal of the spousal application was because the marriage was not genuine. A submission based on personalized risk was carefully considered and found to be unsubstantiated. In this refused spousal case, it would be appropriate to use special program code PZR.

THE SPECIAL CATEGORY CODES*

CODE	DESCRIPTION
SNF	Spouse not sponsored as a member of the family class
SCL	Spouse – common-law
SSS	Spouse – same-sex
DNF	Dependent child not sponsored as a member of the family class
PNF	Parent/grandparent not sponsored as a member of the family class
SOF	Separation of parents and dependent children outside of the family class
DFM	De facto family members
PIL	Prolonged inability to leave Canada has led to establishment
PZR	Personalized risk
RAL	Refugees who apply for landing too late
FMV	Family violence
FCC	Former Canadian citizens
OCS	Other cases

Note: *A more complete description of the general case types is included in* Section 8 *of Chapter IP-5.*

12.3 Landing interview

Landing Interview Checklist

- Verify that the applicant's passport has not expired.
- Verify identity documents, if this has not already been done.
- Ask the applicant the required questions concerning criminality and war crimes.
- Verify that applicant and dependants in Canada do not rely on social assistance [A19(1)(b)].
- Determine if all dependants of the applicant in Canada have been examined.
- Have the applicant sign and date the Record of Landing. Sign and date it yourself.
- If the applicant has either a refugee claim or a judicial review application of a negative CRDD decision pending, inform the Refugee Division of the IRB (in the case of a refugee claim) or the Department of Justice (in the case of a judicial review application) of the applicant's landing. It will likely affect the applicant's eligibility to continue with these other avenues.

12.4 Applicant (or dependent in Canada) is inadmissible

If the applicant (or a dependent in Canada) is inadmissible, do not land the applicant or dependents. Prepare an A27 report and refer the case to the Minister's delegate with a recommendation on the disposition of the case (see Section 9.12 - *Principal applicant or dependent in Canada is inadmissible*).

12.5 No show for landing interview

when applicants do not attend their landing interview, the Department must, nonetheless, conclude these cases so that they do not remain outstanding and unconcluded indefinitely.

WHEN	THEN
• The letter scheduling landing is returned due to an invalid address	- Follow the procedures in Section 11.5 - Loss of contact with the applicant
• There has been no response from the applicant	- It may be appropriate to refuse the case; see Section 11.5 - Loss of contact with the applicant: Sample letter - APPENDIX C - ANNEX 10

12.6 Non-Payment of Right of Landing Fee (ROLF)

When an applicant is ready for landing but unwilling or unable to pay ROLF, do not refuse the application.

Inform the applicant that the application for landing will be held in abeyance until the ROLF or loan approval for ROLF is received.

You may wish to bring the file forward periodically and remind applicants of the status or their application using (APPENDIX C - ANNEX 12).

13 FEEDBACK

13.1 Keeping clients informed

As mentioned previously, the principal methods used to keep clients informed are

- automated letters
- phone calls
- in-person interviews and counselling.

Clients must be informed when

- additional information is required
- the Department has information material to the H&C or admissibility decision that did not come from the applicant
- a decision has been made.

13.2 Representations and release of information

Privacy legislation requires that a client's information be released only to the client or the client's designated representative.

Representations or complaints about decisions should be dealt with either in person or by mail, according to Regional directives. Give information over the phone only when the caller can be positively identified as either the client or his/her representative.

14 ADMINISTRATIVE LAW PRINCIPLES TO GUIDE YOUR DECISION-MAKING

Before processing an H&C application, review the administrative law principles that are summarized below. Please note that this section is an overview only and does not constitute an exhaustive presentation of legal principles applicable to H&C decision-making.

14.1 Delegated authority

As a holder of decision-making authority delegated from the Minister, you cannot exceed the scope of the delegation granted (see Section 1.5 – *Authority to assess H&C requests*).

14.2 Duty to consider

You are under a **duty to consider formal applications** for an exemption under R2.1 on H&C grounds on behalf of the Minister. Remember that the onus is on the applicant to satisfy you that there are grounds for an exemption. You are not required to satisfy applicants that such grounds do not exist.

14.3 Onus on applicant

You do not have to elicit H&C factors; the onus is on applicants to put forth any H&C factors that they feel exist in their case. Although you are not expected to delve into areas that are not presented, you should clarify possible H&C grounds if these are not well articulated.

14.4 All the evidence

You must consider and weigh **all** the relevant evidence and information, that is, what the applicant sees as important and what you consider to be important. You cannot ignore evidence or place too much emphasis on one factor to the exclusion of all other factors. **Look at the whole picture.** If there is information or evidence that you do not feel is relevant or should be given much weight, you should document this appropriately.

14.5 The right to be "heard"

One of the fundamental components of natural justice or fairness is the right to be heard. This means that applicants have a fair opportunity to present their case. For the purpose of assessing an H&C application, the applicant's written submissions may contain the information you need to make your decision. The right to be heard does not require an absolute right to a personal interview or hearing.

If an interview is held, there is no right for counsel to attend the H&C interview. However, counsel is welcome to attend when available on the date set for the interview. Counsel does not necessarily mean a lawyer or other legal representative. Counsel can be a friend, relative or any other interested person who is there with the permission of the applicant. The presence of counsel should not impede the interview process.

If you provide the applicant with a particular period of time within which to provide information or make further submissions, you cannot make a decision on the application until after this time period has gone by.

14.6 The "case to be met"

There is no particular "case to be met". Applicants determine what they feel are the H&C factors of their particular circumstances and make submissions on them. While you do not have to elicit H&C factors (*i.e.*, delve into areas that are not presented in the applicants' submissions), it is a good practice to clarify possible H&C grounds if these are not well articulated.

Situations may arise where you have information or evidence from a source other than the applicant (extrinsic evidence). If you wish to rely upon it when making your H&C

decision, you have an obligation to share the information with the applicant and allow submissions to be made on this information.

In instances where the source of the information is confidential, the obligation remains to share the gist of the information with the applicant, so that he or she is aware of the case to be met. There is no need to release the identity of the confidential source. This is a sensitive situation where you must exercise discretion; seek advice from your Regional program specialist.

In cases where the information on file is not relevant to your decision, that is, where you do not rely on it, note the file with the fact that you did not take the information into consideration at all.

Intrinsic Information

- is provided by or readily available to the applicant, and
- the applicant is aware it will be used in your decision

  For example, information provided by an applicant's spouse at an interview to determine bona fides of a marriage is considered intrinsic because the applicant has access to it and would reasonably expect you to use it in your decision.

Extrinsic Information

- is from a source other than the applicant, and
- the applicant is not aware that it is being used in your decision or does not have access to it

  For example, information received from an anonymous source that you rely upon in making the H&C decision.

For example, you may ask a visa office about the authenticity of documents submitted as part of the H&C application. If the visa office replies that the documents are not authentic, and you wish to rely upon this information, you will have to share this extrinsic evidence with the applicant and allow him or her to make submissions on it.

14.7 Bias

The second major component of natural justice or fairness is the right to have a fair and impartial decision-maker. In other words, you must approach the case with an open mind and be free to come to your own decision in light of all the facts known and the submissions made. Your decision-making must be carried out in an impartial and objective manner.

Examples of a failure to approach the case with an open mind could be:

- too much reliance on the factors set out in the H&C guidelines, to the exclusion of any other submissions made by the applicant
- "pre-judgment" by the decision-maker; each individual case must be determined on its own merits.

As a decision-maker, you may consult with colleagues and supervisors in relation to cases you are considering. However, the final decision must be your own.

14.8 Right to a decision

Decisions must be rendered within a reasonable time period and applicants informed of your decision in writing.

14.9 Right to reasons

The established rule is that formal, written reasons are not required unless the statute requires it. Because there is no statutory right to reasons in relation to H&C decision-

making, your written decision need only state that there were or were not sufficient H&C grounds for exercising discretion (see APPENDIX A - ANNEX 3). However, as noted in Section 1.10 *Recording the reasoning behind your H&C decision*, it is a good practice to record the reasoning behind your H&C decision in your written notes to file.

14.10 Supreme Court of Canada decision in Baker v. M.C.I.

This section summarizes the issues and impact on CIC of the Supreme Court of Canada decision in the case of *Baker*, an appeal against a negative decision on an application for permanent residence made in Canada on humanitarian and compassionate (H&C) grounds.

14.10.1 Case details

- In 1981, Ms. Baker came to Canada as a visitor. She worked illegally for the next eleven years as a domestic worker.
- In December 1992, a deportation order was issued against her for working illegally and overstaying visitor status.
- In January 1993, an H&C application was submitted. Factors put forward included Ms. Baker's medical condition, lack of medical treatment in country of origin, and the effect of deportation on four Canadian-born children (born 1985; twins in 1989; 1992).
- In April 1994, Ms. Baker was advised of the negative H&C decision by letter stating that there were insufficient H&C grounds to warrant processing within Canada; according to procedures, no written reasons were given.
- Upon request by Ms. Baker's counsel, the immigration officer's notes were provided. (See text of the Supreme Court's decision in Baker at http://www.lexum.umontreal.ca/csc-scc/en/index.html
- In May 1994, Ms. Baker was directed to report for removal in mid-June.
- In June 1994, the Federal Court – Trial Division (FCTD) stayed the deportation order pending disposition of an application for leave to commence judicial review.
- In June 1995, the FCTD dismissed the application for judicial review and certified one question: "Given that the Immigration Act does not expressly incorporate the language of Canada's international obligations with respect to the International Convention on the Rights of the Child, must federal immigration authorities treat the best interests of the child as a primary consideration in assessing an applicant under s.114(2) of the Immigration Act?"
- In November 1996, the Federal Court of Appeal dismissed the appeal from the FCTD and held that the question was not properly before the Court and that the certified question be answered in the negative.
- In November 1998, the appeal was heard before the Supreme Court of Canada. [Note: Once before the Supreme Court, there is no limitation to address only a certified question. The Court may consider all aspects of an appeal lying within its jurisdiction.]
- In July 1999, the Supreme Court released the decision in the case of Baker. The appeal was allowed on the grounds of violation of the principles of fairness owing to a reasonable apprehension of bias and because the exercise of discretion was unreasonable. The matter was returned to the Minister for redetermination by a different immigration officer.

14.10.2 Court's reasons for deciding to return for redetermination

The following excerpts from the Court's decision explain some of the rationale for deciding to return the application for redetermination by another officer:

The notes of Officer L, in relation to the consideration of "H&C factors", read as follows:

The PC is a paranoid schizophrenic and on welfare. She has no qualifications other than as a domestic. She has FOUR CHILDREN IN JAMAICA AND ANOTHER FOUR BORN HERE. She will, of course, be a tremendous strain on our social welfare systems for (probably) the rest of her life. There are no H&C factors other than her FOUR CANADIAN-BORN CHILDREN. So we let her stay because of that? I am of the opinion that Canada can no longer afford this type of generosity.

In my opinion, the approach taken to the children's interests shows that this decision was unreasonable in the sense contemplated in Southam, supra. The officer was completely dismissive of the interests of Ms. Baker's children. As I will outline in detail in the paragraphs that follow, I believe that the failure to give serious weight and consideration to the interests of the children constitutes an unreasonable exercise of the decision conferred by the section, notwithstanding the important deference that should be given to the decision of the immigration officer. Professor Dyzenhaus has articulated the concept of 'deference as respect' as follows: deference as respect requires not submission but a respectful attention to the reasons offered or which could be offered in support of a decision... (D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., The Province of Administrative Law (1997), 279, at p.286).

The reasons of the immigration officer show that his decision was inconsistent with the values underlying the grant of discretion. They therefore cannot stand up to the somewhat probing examination required by the standard of reasonableness.

...Emphasis on the rights, interests, and needs of children and special attention to childhood are important values that should be considered in reasonably interpreting the 'humanitarian' and 'compassionate' considerations that guide the exercise of the discretion. I conclude that because the reasons for this decision do not indicate that it was made in a manner which was alive, attentive, or sensitive to the interests of Ms. Baker's children, and did not consider them as an important factor in making the decision, it was an unreasonable exercise of the power conferred by the legislation, and must, therefore, be overturned. In addition, the reasons for decision failed to give sufficient weight or consideration to the hardship that a return to Jamaica might cause Ms. Baker, given the fact that she had been in Canada for 12 years, was ill and might not be able to obtain treatment in Jamaica, and would necessarily be separated from at least some of her children.

Therefore, both because there was a violation of the principles of procedural fairness owing to a reasonable apprehension of bias, and because the exercise of the H&C discretion was unreasonable, I would allow this appeal.

14.10.3 Summary of issues and impact on CIC

(i) **Participatory Rights (Right to an Interview)** – There is no general requirement to hold interviews prior to making H&C decisions. There is no requirement for Canadian-born children to receive separate notices of H&C decision-making nor a separate opportunity to make their own submissions.

(ii) **Appropriateness of H&C Guidelines** – The Court noted that the guidelines in immigration manual chapter IE-9 (in effect at the time Ms. Baker's application was refused), were consistent with the approach that decisions must consider humanitarian and compassionate values. The principles underlying the IE-9 guidelines have been expanded in the current version of the immigration manual chapter dealing with H&C applications (IP-5).

(iii) **Consideration of Children's Interests** – While the best interests of children must always be taken into account as an important factor that is given substantial weight, this does not mean that they will outweigh other factors of the case.

There may be grounds for refusing an H&C application even after considering the best interests of children.

(iv) **Written Reasons for Decision and Impact on Note-Taking** – The issue of written reasons for decision is dealt with extensively in OM IP 00-07– Providing Written Reasons – Humanitarian or Compassionate (H&C) Decisions. The Court's willingness to accept notes to file as reasons for decision does not mean that note-taking practices have to change or become more elaborate. Adhering to the principles of note-taking as set out in immigration manual chapter IP-5 (Sections 1.9 and 1.10) is all that is required.

(v) **Appropriate Standard of Review for Discretionary H&C Decisions: reasonableness simpliciter** – The rule of administrative law relating to review of discretionary decisions has traditionally been on limited grounds, such as decisions made in bad faith or for improper purpose or where irrelevant considerations were used or, from time to time, if the decision was considered "unreasonable". Discretion must be exercised in a manner that is within a reasonable interpretation of the statute, in accordance with general principles of rule of law and administrative law governing discretion, reflective of the fundamental values of Canadian society and consistent with the Canadian Charter of Rights and Freedoms.

(vi) The Court concluded that significant deference should be accorded to immigration officers exercising discretionary H&C authority; however, the standard of reviewing H&C decisions should be **reasonableness simpliciter**. This means that decisions must be supported by reasons that can withstand a "somewhat probing examination"; that is, there must be a solid foundation of evidence and conclusions drawn must be logical.

(vii) **Certified Question: Canada's International Obligations** – Although Canada may be a signatory to international treaties and conventions, they are not part of Canadian law unless they have been implemented by statute; they have no direct application within Canadian law. They may, however, help inform the context of statutory interpretation and judicial review. In the instance of the Convention on the Rights of the Child, it is an indicator of the importance of considering the interests of children when making H&C decisions.

14.10.4 Why the Baker decision was not upheld

The Court concluded that the officer's decision in the case of Baker was unreasonable. The officer's notes pertaining to the Canadian-born children were completely dismissive of their interests or needs. Failure to give serious weight and consideration to the interests of the children constituted an unreasonable exercise of discretion. Specifically, the Court stated: "... the reasons for this decision do not indicate that it was made in a manner which was alive, attentive, or sensitive to the interests of Ms. Baker's children, and did not consider them as an important factor in making the decision ..."

Also, the comments made in the notes to file gave rise to a reasonable apprehension of bias on the part of the immigration officer as they did not disclose the existence of an open mind or a weighing of the particular circumstances of the case, free from stereotyping. The statements made by the officer gave the impression that the decision was made, not on the evidence before him, but because Ms. Baker was a single mother with several children and she had been diagnosed with a psychiatric illness. The use of capital letters highlighting the number of children suggested this was a reason for making the negative decision. Comments about the [immigration] "system" and Canada's "generosity" reflected the officer's frustration and a lack of impartiality.

As reflected in the officer's notes, inattention to the interests of the children and his lack of impartiality led the Court to find that, in the circumstances of the case, his exercise of discretion could not be upheld as it was an unreasonable decision.

The complete text of the Supreme Court's decision in Baker can be found at http://www.lexum.umontreal.ca/csc-scc/en/index.html under Judgments for 1999, Volume 2.

15 REFERENCES

15.1 Abbreviations and short forms commonly used

CIC	Canada Immigration Centre
CLPR	Country of Last Permanent Residence
CPC-V	Case Processing Centre Vegreville
CPIC	Canadian Police Information Centre
CPS	Case Processing System
CRDD	Convention Refugee Determination Division
CSIS	Canadian Security and Intelligence Service
CSQ	Certificat de sélection du Québec
DMP	Designated Medical Practitioner
FOSS	Field Operational Support System
H&C	Humanitarian and Compassionate
HPM	Handling of Public Monies
IAD	Immigration Appeal Division
IC	Immigration Manual - "Classified"
IP	Immigration Inland Processing Manual
IR	Immigration Reference Manual
IRB	Immigration and Refugee Board
MRCI	Ministère des Relations avec les citoyens et de l'Immigration
NHQ	National Headquarters
OM	Operations Memorandum
OP	Immigration Overseas Processing Manual
PCDO	Post-claim Determination Officer
PDRCC	Post-determination Refugee Claimants in Canada Class
POE	Port of Entry
RCMP	Royal Canadian Mounted Police
RHQ	Regional Headquarters
RNH	Immigration Health Services
ROLF	Right of Landing Fee
WIP	Work in Progress

15.2 Legislative references

Consult the *Immigration Act* or the *Immigration Regulations, 1978*, for the complete text of these sections.

A2	Definition of "medical officer"
A5(2)	Requirements for landing: applicant must not be a member of an inadmissible class and otherwise meet requirements of the Act and Regulations
A6(5)	Allows applications for landing in Canada for reasons of public policy or humanitarian considerations for prescribed classes of immigrants, i.e. Live In Caregivers, PDRCC, Undocumented Refugee Class
A9(1)	Requires every immigrant to make application for and obtain a visa before coming to Canada
A11	Requires every immigrant to undergo a medical examination by a medical officer
A19	The inadmissible classes
A26(1)	Where a person ceases to be a visitor in Canada

A27	Where an immigration officer is required to write a report which may lead to removal of the non-Canadian citizen from Canada
A27(2.1)	Provides for reinstatement of status for persons who have ceased to be visitors
A37(2)	When a Minister's permit may not be issued
A46.04(1)	Eligibility and landing provisions for persons applying as Convention refugees whose status was determined by the CRDD
A46.04(8)	Requirement for Convention refugees to file an application for landing within 180 days of having their status determined by the CRDD
A108	Consultations and agreements with provinces
A114(2)	Provides for the Governor in Council to authorize, by regulation, the Minister to exempt any person from the regulations or otherwise facilitate their admission for compassionate or humanitarian reasons
R2(1)	Definitions: adopted, dependent, dependent daughter/son, employment authorization, member of the family class, spouse, student authorization
R2.1	Authorizes Minister to exempt any person from any regulation made under A114(1) or otherwise facilitate the admission to Canada of any person due to compassionate or humanitarian considerations
R6(1)(e)	Prohibition against adoptions of convenience
R14(1)	Requirement that every immigrant be in possession of a valid passport
R16	Provision for persons to apply for and obtain student authorizations from within Canada
R18	Requirement for anyone who wishes to work in Canada, other than Canadian citizens or permanent residents, to have a valid employment authorization and comply with any terms and conditions specified
R19(4)(i)	Provision for approved H&C applicants to apply for and obtain an employment authorization
R20(5)(a)	When an immigration officer may issue an employment authorization
R21	Requirement for medical examination for persons who wish to work in a job where the protection of public health is essential

15.3 Other terminology

See Section 1.7.3 for explanations about the terminology used in this chapter.

APPENDIX A
Sample letters

ANNEX 1
Negative Decision

To advise simultaneously on H & C Decision and Application for Landing, see letter in APPENDIX C - ANNEX 1

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

Humanitarian and compassionate factors are assessed to determine whether an exemption from the requirement to obtain an immigrant visa prior to coming to Canada [A9(1)] will be granted.

On (date), a representative of the Minister of Citizenship and Immigration reviewed the circumstances of your request and decided that an exemption will not be granted for your application.

CLOSING FOR IN-STATUS CASES:

- Your visitor status expires on (date). If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your visitor status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.

CLOSING FOR OUT-OF-STATUS CASES:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for section 27 report, etc.)

If you require clarification or additional information, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Note: No appeal rights

ANNEX 2

Positive Visa Exemption Decision [A9(1)] – No Known Landing Barriers [A5(2)]

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. This is a two step decision making process.

First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from the usual requirement of having to obtain an immigrant visa before coming to Canada [A9(1)]. On (date), a representative of the Minister of Citizenship and Immigration **approved** your request for an exemption from the immigrant visa requirement for the purpose of this application.

Second, **you must meet all other statutory requirements of the Immigration Act** [A5(2)], for example, medical, security and passport considerations and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note, your application for permanent residence could be refused if:

- **you do not meet all statutory requirements of the Immigration Act [A5(2)].**
- **you receive a letter asking for a reply within 30 days and do not respond.**
- **you fail advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the Call Centre in your area or on-line at http://www.cic.gc.ca.**
- **you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the Immigration Act as inadmissible persons.**

If preliminary information indicates that you probably meet all statutory requirements of the Immigration Act, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. This usually occurs about nine months after the date your visa exemption was approved (see paragraph two of this letter). **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled "Changing Terms and Conditions or Extending Your Stay (Visitor, Student, Worker, Minister's Permit Holder)" which can be obtained by telephoning the Call Centre in your area or visiting our Web site at http://www.cic.gc.ca.

If your marital status or personal situation changes, please write to this office immediately or telephone the Call Centre in your area.

Your visa exemption was granted, in part, due to the hardship you would face if you had to leave Canada and apply from outside of the country as usually required. **If you leave Canada, there is no guarantee that you will be re-admitted so that you can continue with this application.**

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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ANNEX 3

Request for further information prior to H&C decision

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. This is a two step decision making process.

First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from the usual requirement of having to obtain an immigrant visa before coming to Canada [A9(1)]. Second, you must meet all other statutory requirements of the Immigration Act [A5(2)], for example, medical, security and passport considerations and arrangements for your care and support. The second decision is made only if you have received an exemption from the immigrant visa requirement.

WHEN INFORMATION TO BE SENT IN:

Before a decision can be made about exempting you from the requirement for an immigrant visa, further information is required, specifically: (explain)

Please send the requested information/documents to this office **within thirty (30) days of the date of this letter**. If you do not, the decision about your immigrant visa exemption will be made based upon the information on your file. . **If you do not reply within 30 days and the decision is to refuse your request for an immigrant visa exemption, there is no authority to re-examine or re-open this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees**.

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

WHEN INFORMATION TO BE PROVIDED AT INTERVIEW:

An interview with you (and your sponsor) is required to assess humanitarian and compassionate factors and determine whether a visa exemption is warranted. Please come to the Canada Immigration Centre located at (address) on (date and time).

If you do not attend this interview, the decision about your immigrant visa exemption will be made based upon the information on your file. If the decision is to refuse your request for an immigrant visa exemption, there is no authority to re-examine or re-open this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you cannot attend this interview, please write to this office immediately explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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ANNEX 4

Negative Decision Based on File Information after letter, in

APPENDIX A - ANNEX 3 **- No Response or No Show**

VIA DOUBLE REGISTERED MAIL

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds and our recent letter to you dated (date) . . .

WHEN INFORMATION WAS TO BE SENT IN:

. . . asking you to send information/documents to this office within thirty (30) days from the date of that letter.

No response was received from you.

WHEN INFORMATION WAS TO BE PROVIDED AT INTERVIEW:

. . . asking you to attend an interview at this office on (date and time).

You did not appear for this interview.

As indicated in our previous letter, a decision about exempting you from the immigrant visa requirement has been made based upon information on your file. On (date), a representative of the Minister of Citizenship and Immigration reviewed the circumstances of your request and decided that an exemption will not be granted for your application.

CLOSING FOR IN-STATUS CASES:

- Your visitor status expires on (date). If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your visitor status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.

CLOSING FOR OUT-OF-STATUS CASES:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for section 27 report, etc.)

If you require clarification or more information, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Note: No appeal rights

ANNEX 5

Positive H&C Decision After Letter in APPENDIX A - ANNEX 3 - Response or Interview

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds and our recent letter to you dated (date) . . . **[WHEN INFO WAS TO BE SENT IN**:. . . asking you to send information/documents to this office within thirty (30) days of the date of that letter. . **WHEN INFO WAS TO BE PROVIDED AT INTERVIEW:** . . . asking you to attend an interview at this office on (date and time).]

As previously indicated, your application involves a two step decision making process. First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from the usual requirement of having to obtain an immigrant visa before coming to Canada [A9(1)]. On (date), a representative of the Minister of Citizenship and Immigration approved your request for an exemption from the immigrant visa requirement for the purpose of this application.

Second, **you must meet all other statutory requirements of the Immigration Act** [A5(2)], for example, medical, security and passport considerations and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note, your application for permanent residence could be refused if:

- **you do not meet all statutory requirements of the Immigration Act [A5(2)].**
- **you receive a letter asking for a reply within 30 days and do not respond.**
- **you fail advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the Call Centre in your area or on-line at http://www.cic.gc.ca.**
- **you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the Immigration Act as inadmissible persons.**

If preliminary information indicates that you probably meet all statutory requirements of the Immigration Act, you will receive a letter and asked to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. This usually occurs about nine months after the date your visa exemption was approved (see paragraph two of this letter). **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled *"Changing Terms and Conditions or Extending Your Stay (Visitor, Student, Worker, Minister's Permit Holder)"* which can be obtained by telephoning the Call Centre in your area or visiting our Web site at http://www.cic.gc.ca.

If your marital status or personal situation changes, please write to this office immediately or telephone the Call Centre in your area.

Your visa exemption was granted, in part, due to the hardship you would face if you had to leave Canada and apply from outside of the country as usually required. **If you leave Canada, there is no guarantee that you will be re-admitted so that you can continue with this application.**

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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ANNEX 6

Positive Decision on H&C and Submissions Required re Extrinsic A5(2) Barrier

Simultaneously informs applicant of positive H&C/visa exemption decision AND that extrinsic evidence indicates requirements of A5(2) will not be met.

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. This is a two step decision making process.

First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from the usual requirement of having to obtain an immigrant visa before coming to Canada [A9(1)]. On (date), a representative of the Minister of Citizenship and Immigration **approved** your request for an exemption from the immigrant visa requirement for the purpose of this application.

Second, **you must meet all other statutory requirements of the *Immigration Act*** [A5(2)], for example, medical, security and passport considerations and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements.

Please note, your application for permanent residence could be refused if:

- **you do not meet all statutory requirements of the Immigration Act [A5(2)].**
- **you receive a letter asking for a reply within 30 days and do not respond.**
- **you fail to advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the Call Centre in your area or on-line at http://www.cic.gc.ca.**
- **you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the Immigration Act as inadmissible persons.**

A review of your application for landing indicates that it may have to be refused as it appears that ((you are a person described in subsection 19(1) [provide details] OR you cannot comply with subsection A5(2) [provide details]).

WHEN INFORMATION IS TO BE SENT IN:

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered. Please write to this office **within thirty (30) days of the date of this letter**. If you do not, the decision about application for permanent residence will be made based upon the information on your file. If you do not reply within 30 days and the decision is to refuse your application, there is no authority to re-examine or re-open this decision. **If you wished any new information to be considered, you would have to submit a new application, including new fees.**

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

WHEN INFORMATION IS TO BE PROVIDED AT INTERVIEW:

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered at an interview with you (and your sponsor). Please come to the Canada Immigration Centre located at (address) on (date and time).

If you do not attend this interview, the decision about your application for permanent residence will be made based upon the information on your file. If the decision is to refuse your application, there is no authority to re-examine or re-open this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you cannot attend this interview, please write to this office immediately, explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

ANNEX 7

For General Case Type Section 8.9 in IP 5 – Refugees that Apply Too Late
Positive Visa Exemption Decision [A9(1)] – No Known Landing Barriers [A5(2)]

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. This is a two step decision making process.

First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from the usual requirement of having to obtain an immigrant visa before coming to Canada [A9(1)]. On (date), a representative of the Minister of Citizenship and Immigration approved your request for an exemption from the immigrant visa requirement for the purpose of this application.

Second, **you must meet all other statutory requirements of the Immigration Act [A5(2)]**, for example, medical, security and passport considerations and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note, your application for permanent residence could be refused if:

- **you do not meet all statutory requirements of the Immigration Act [A5(2)].**
- **you receive a letter asking for a reply within 30 days and do not respond.**
- **you fail to advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the Call Centre in your area or on-line at http://www.cic.gc.ca.**
- **you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the Immigration Act as inadmissible persons.**

If preliminary information indicates that you probably meet all statutory requirements of the Immigration Act, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. This usually occurs about nine months after the date your visa exemption was approved (see paragraph two of this letter). If you **do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled "Changing Terms and Conditions or Extending Your Stay (Visitor, Student, Worker, Minister's Permit Holder)" which can be obtained by telephoning the Call Centre in your area or visiting our Web site at http://www.cic.gc.ca.

If your marital status or personal situation changes, please write to this office immediately or telephone the Call Centre in your area.

Your visa exemption was granted, in part, due to the hardship you would face if you had to leave Canada and apply from outside of the country as usually required. **If you leave Canada, there is no guarantee that you will be re-admitted so that you can continue with this application.**

PLEASE NOTE: You are a person who was determined to be a Convention refugee by the Convention Refugee Determination Division of the Immigration Refugee Board on (date). Because you did not submit your application for permanent residence as a Convention refugee within 180 days of (date), your application must be processed under the guidelines for humanitarian and compassionate cases. Although you are still recognized as a Convention refugee, for the purpose of your application for permanent residence, usual requirements must be met. These include:

- **providing a passport, travel document or other satisfactory identity document;**
- **being found medical admissible;**
- **not including dependents residing abroad in this application; they must be sponsored by you as members of the family class after you are granted permanent resident status.**

You are not, however, required to pay the Right of Landing Fee.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

APPENDIX B
Sample Letters

ANNEX 1
Positive H&C Decision Made Previously – Submissions Required on Extrinsic Information regarding Misrepresentation of H&C Factors

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A letter dated (date) informed you that on (date) a representative of the Minister of Citizenship and Immigration approved your request for an exemption from the immigrant visa requirement. The exemption decision was made based upon information you provided in your application (and at an interview on . . .), specifically, (provide details).

New information has been received that could be material to the immigrant visa exemption decision made previously. This means, if this information is correct and had it been known at the time the exemption decision was being made, it is possible that an exemption would not have been granted in your application. **As a result, the original decision to exempt you from the immigrant visa requirement may have to be re-opened and all factors may have to be re-examined taking into account the new information received.**

Specifically, it has come to light that (describe new information). This differs from the information you provided to the extent that it could be considered to be misrepresentation or fraud related to a material fact.

WHEN INFORMATION IS TO BE SENT IN:

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered. Please write to this office **within thirty (30) days of the date of this letter**. If you do not, a decision will be made based upon the information on your file. **If you do not reply within 30 days and the decision is to refuse your request for an immigrant visa exemption, there is no authority to re-examine or re-open this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.**

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

WHEN INFORMATION IS TO BE PROVIDED AT INTERVIEW:

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered at an interview with you (and your sponsor). Please come to the Canada Immigration Centre located at (address) on (date and time).

If you do not attend this interview, a decision will be made based upon the information on your file. If the decision is to refuse your request for an immigrant visa exemption, there is no authority to re-examine or re-open this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you cannot attend this interview, please write to this office immediately, explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

ANNEX 2

Submissions Received – Resuming Normal Processing due to Insufficient Evidence of Misrepresentation of H&C Factors

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter indicated that new information, different from the information you previously provided, had been received and that this could result in re-opening the decision to approve your immigrant visa exemption.

The information you provided **[WHEN INFO WAS TO BE SENT IN:** in your letter of (date) **OR WHEN INFO WAS TO BE PROVIDED AT INTERVIEW:** . . . at the interview on (date)] has been carefully reviewed together with all other information in your application. It has been determined that there is insufficient information regarding misrepresentation or fraud related to a material fact. **As a result, the immigrant visa exemption previously granted remains in effect and normal processing of your application has resumed**.

Your application for permanent residence will continue to be processed to determine whether you meet all other statutory requirements of the Immigration Act [A5(2)], for example, medical, security and passport considerations and arrangements for your care and support. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note, your application for permanent residence could be refused if:

- **you do not meet all statutory requirements of the Immigration Act [A5(2)].**
- **you receive a letter asking for a reply within 30 days and do not respond.**
- **you fail to advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the Call Centre in your area or on-line at http://www.cic.gc.ca.**
- **you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the Immigration Act as inadmissible persons.**

If preliminary information indicates that you probably meet all statutory requirements of the Immigration Act, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. This usually occurs about nine months after the date your visa exemption was approved (see paragraph two of this letter). **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled *"Changing Terms and Conditions or Extending Your Stay (Visitor, Student, Worker, Minister's Permit Holder)"* which can be obtained by telephoning the Call Centre in your area or visiting our Web site at http://www.cic.gc.ca.

If your marital status or personal situation changes, please write to this office immediately or telephone the Call Centre in your area.

Your visa exemption was granted, in part, due to the hardship you would face if you had to leave Canada and apply from outside of the country as usually required. **If you leave Canada, there is no guarantee that you will be re-admitted so that you can continue with this application**.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

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Toronto	973-4444
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ANNEX 3

Submissions Received – Negative Decision on Re-Opened Application

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter indicated that new information, different from the information you previously provided, had been received and that this could result in re-opening the decision to approve your immigrant visa exemption.

The information you provided . . .**[WHEN INFO WAS TO BE SENT IN:** . . .in your letter of (date) **OR WHEN INFO WAS TO BE PROVIDED AT INTERVIEW:** . . . at the interview on (date)] has been carefully reviewed together with all other information in your application. On (date), a representative of the Minister of Citizenship and Immigration decided that there is evidence suggesting misrepresentation or fraud related to a material fact and, had this information been known at the time of the original decision, a visa exemption would not have been granted in your case. **As a result, the immigrant visa exemption previously granted has no further effect and processing of your application will not continue**.

CLOSING FOR IN-STATUS CASES:

- Your visitor status expires on (date). If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your visitor status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a section 27(2)(g) report as a person who has remained in Canada by reason of fraudulent or improper means or misrepresentation of a material fact. (additional instructions)

CLOSING FOR OUT-OF-STATUS CASES:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for section 27 report, etc.)

If you require clarification or more information, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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Note: No appeal rights

ANNEX 4

Negative Decision Based on File Information After Letter in APPENDIX B - ANNEX 1 No Response or No Show

VIA DOUBLE REGISTERED MAIL

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

A recent letter indicated that new information, different from the information you previously provided, had been received and that this could result in re-opening the decision to approve your immigrant visa exemption. **(WHEN INFO WAS TO BE SENT IN:** You were invited to send any information that you wished to be considered to this office within thirty (30) days from the date of that letter. No response was received from you.) **(WHEN INFO WAS TO BE PROVIDED AT INTERVIEW:** You were asked to attend an interview at this office on (date and time). You did not appear for this interview.)

As indicated in our previous letter, a determination about re-opening the decision to approve your exemption from the immigrant visa requirement has been made based upon information on your file. On (date), a representative of the Minister of Citizenship and Immigration decided that there is evidence suggesting misrepresentation or fraud related to a material fact and, had this information been known at the time of the original decision, a visa exemption would not have been granted in your case. As a result, the immigrant visa exemption previously granted has no further effect and processing of your application will not continue.

CLOSING FOR IN-STATUS CASES:

- Your visitor status expires on (date). If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your visitor status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a section 27(2)(g) report as a person who has remained in Canada by reason of fraudulent or improper means or misrepresentation of a material fact. (additional instructions)

CLOSING FOR OUT-OF-STATUS CASES:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for section 27 report, etc.)

If you require clarification or more information, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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Note: No appeal rights

APPENDIX C
Sample Letters

ANNEX 1
Inadmissibility (Intrinsic) Known at Outset: Simultaneously Informs Application for Landing Refused Although H&C Positive

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. This is a two step decision making process.

First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from the usual requirement of having to obtain an immigrant visa before coming to Canada [A9(1)]. On (date), a representative of the Minister of Citizenship and Immigration approved your request for an exemption from the immigrant visa requirement for the purpose of this application. **This decision, however, does not exempt you from the second step of the process, that is, meeting all other statutory requirements of the Immigration Act [A5(2)]**, such as, medical, security and passport considerations and arrangements for your care and support.

A separate decision has been made regarding your ability to meet other statutory requirements and it appears that you are a person described in subsection 19(1) and person described in this subsection are inadmissible to Canada. Specifically,(provide details). **As a result, your application for permanent residence is refused and the visa exemption previously granted has no further effect.**

CLOSING FOR IN-STATUS CASES:

- Your visitor status expires on (date). If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your visitor status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a report as a person described in subsection 19(1)(?).

CLOSING FOR OUT-OF-STATUS CASES:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for section 27 report, etc.)

If you require clarification or more information, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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Note: Issue appeal rights if applicant was sponsored as a member of the family class.

ANNEX 2

Submissions Required on Extrinsic Information Indicating A5(2) Barrier

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. In previous correspondence, you were informed that an immigrant visa exemption had been granted and that your application for permanent residence would continue to be processed to determine whether you met all other statutory requirements of the Immigration Act [A5(2)], for example, medical, security, passport, etc.

New information suggests that your application for landing may have to be refused as it appears you are a person described in subsection 19(1)(?) of the Immigration Act. Persons described in this subsection are inadmissible to Canada. Specifically, (provide details). (Suggested wording for medically inadmissible cases: Specifically, a medical notification has been received stating that you are (your dependent, (dependent's name) is) suffering from (disease/condition and diagnosis from IMM1014). This leads me to believe that you/your dependent (may be a danger to public health/will cause excessive demands on health or social services in Canada) which is cause for refusal of your application for permanent residence.)

WHEN INFORMATION IS TO BE SENT IN:

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered. Please write to this office **within thirty (30) days of the date of this letter.** If you do not, a decision will be made based upon information on your file. **If you do not reply within 30 days and the decision is to refuse your application for landing, there is no authority to re-examine or re-open this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.**

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

WHEN INFORMATION IS TO BE PROVIDED AT INTERVIEW:

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered at an interview with you (and your sponsor). Please come to the Canada Immigration Centre located at (address) on (date and time).

If you do not attend this interview, a decision will be made based upon information on your file. If the decision is to refuse your application for landing, there is no authority to re-examine or re-open this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you cannot attend this interview, please write to this office immediately, explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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ANNEX 3

Submissions Received – Application for Landing Refused

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter invited you to respond to new information that had been received suggesting that you were a person described in an inadmissible category.

The information you provided (**WHEN INFO WAS TO BE SENT IN:** in your letter of (date) **OR WHEN INFO WAS TO BE PROVIDED AT INTERVIEW**: . . . at the interview on (date)) has been carefully reviewed together with all other information in your application. It appears that you are a person described in subsection 19(1)(?), that is, a person who (provide details). As a result, your application for permanent residence is refused and the immigrant visa exemption previously granted has no further effect.

CLOSING FOR IN-STATUS CASES:

- Your visitor status expires on (date). If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your visitor status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a report as a person described in subsection 19(1)(?).

CLOSING FOR OUT-OF-STATUS CASES:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for section 27 report, etc.)

If you require clarification or additional information, visit the CIC Web site or telephone the Call Centre in your area:

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Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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Note: Issue appeal rights if applicant was sponsored as a member of the family class.

ANNEX 4

Submissions Received – No A5(2) Barrier – Resuming Normal Processing

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter invited you to respond to new information that had been received suggesting that you were a person described in an inadmissible category.

The information you provided **[WHEN INFO WAS TO BE SENT IN:** in your letter of (date) **OR WHEN INFO WAS TO BE PROVIDED AT INTERVIEW:** . . . at the interview on (date)] has been carefully reviewed together with all other information in your application.

It has been determined that you are not a person described in subsection 19(1)(?). Your application for permanent residence will continue to be processed to determine whether you meet all other statutory requirements of the Immigration Act [A5(2)]. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note, your application for permanent residence could be refused if:

- **you do not meet all statutory requirements of the Immigration Act [A5(2)].**
- **you receive a letter asking for a reply within 30 days and do not respond.**
- **you fail to advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the Call Centre in your area or on-line at http://www.cic.gc.ca.**
- **you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the Immigration Act as inadmissible persons.**

If preliminary information indicates that you probably meet all statutory requirements of the Immigration Act, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. This usually occurs about nine months after the date your visa exemption was approved (see paragraph two of this letter). If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled "Changing Terms and Conditions or Extending Your Stay (Visitor, Student, Worker, Minister's Permit Holder)" which can be obtained by telephoning the Call Centre in your area or visiting our Web site at http://www.cic.gc.ca.

If your marital status or personal situation changes, write to this office immediately or telephone the Call Centre in your area.

Your visa exemption was granted, in part, due to the hardship you would face if you had to leave Canada and apply from outside of the country as usually required. If you leave Canada, there is no guarantee that you will be re-admitted so that you can continue with this application.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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ANNEX 5

Submissions Received – No A5(2) Barrier – Invitation to Landing Interview

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter invited you to respond to new information that had been received suggesting that you were a person described in an inadmissible category.

The information you provided **(WHEN INFO WAS TO BE SENT IN:** in your letter of (date) OR **WHEN INFO WAS TO BE PROVIDED AT INTERVIEW:** . . . at the interview on (date)) has been carefully reviewed together with all other information in your application.

It appears that you are not a person described in subsection 19(1)(?).

Previous correspondence informed that you had been granted an exemption from the immigrant visa requirement and that you must meet all other statutory requirements of the Immigration Act [A5(2)]. A final determination on whether you meet statutory requirements can only be made at a landing interview.

A landing interview has been scheduled for you on (date and time)at the Canada Immigration Centre, (address).

Please note:

- **If you are currently in receipt of welfare or social services benefits, please write to this office as soon as possible explaining your situation.**
- **If you are currently employed but were receiving welfare or social services benefits when you submitted your application for permanent residence, please bring proof of employment and income and termination of benefits with you to the above noted interview.**
- **If you have received welfare or social services benefits at any time since applying for permanent residence, please bring proof of employment and income and termination of benefits with you to the above noted interview.**
- **If you cannot attend this interview, please write to this office immediately, explaining why.**
- **Failure to appear for this interview may be perceived as lack of interest in permanent residence and your application could be refused.**

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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ANNEX 6

Application for Landing Refused - Based on File Information After No Response/No Show to Show to Letter in APPENDIX D - ANNEX 1 or in APPENDIX A - ANNEX 6

VIA DOUBLE REGISTERED MAIL

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter invited you to respond to new information that had been received suggesting that you were a person described in an inadmissible category . . .

WHEN INFORMATION WAS TO BE SENT IN:

. . . by writing to this office within thirty (30) days from the date of that letter.

No response was received from you.

WHEN INFORMATION WAS TO BE PROVIDED AT INTERVIEW:

. . . by attending an interview at this office on (date and time).

You did not appear for this interview nor did you contact this office to explain why.

As indicated in the previous letter, a decision about your application for permanent residence has been made based upon information on your file. On (date), a representative of the Minister of Citizenship and Immigration reviewed the information on your file and it appears that you are a person described in subsection 19(1)(?), that is, a person who (provide details). **As a result, your application for permanent residence is refused and the immigrant visa exemption previously granted has no further effect**.

CLOSING FOR IN-STATUS CASES:

- Your visitor status expires on (date). If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your visitor status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a report as a person described in subsection 19(1)(?).

CLOSING FOR OUT-OF-STATUS CASES:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for section 27 report, etc.)

If you require clarification or more information, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Note: Issue appeal rights if applicant was sponsored as a member of the family class.

ANNEX 7

Request for Further Information

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A letter dated (date) informed you that on (date) a representative of the Minister of Citizenship and Immigration approved your request for an exemption from the immigrant visa requirement.

This letter also informed you that you were required to meet all other statutory requirements of the Immigration Act [A5(2)], for example, medical, security, passport considerations and arrangements for your care and support.

WHEN INFORMATION IS TO BE SENT IN:

Before a decision can be made about whether you meet the requirements of A5(2) (provide details), further information is required, specifically: (explain)

Please send the requested information/documents to this office within thirty (30) days of the date of this letter. If you do not, the decision about whether you meet statutory requirements will be made based upon the information on your file.. If you do not reply within 30 days and the decision is to refuse your application for permanent residence, there is no authority to re-examine or re-open this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

WHEN INFORMATION IS TO BE PROVIDED AT INTERVIEW:

An interview with you (and your sponsor) is required to assess whether you meet the requirement (provide details). Please come to the Canada Immigration Centre located at (address) on (date and time). If you do not attend this interview, the decision about whether you meet statutory requirements will be made based upon the information on your file. If the decision is that there is insufficient information to make this decision, your application may be refused. If refused, there is no authority to re-examine or re-open this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you cannot attend this interview, please write to this office immediately explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

ANNEX 8

Application for Landing Refused Based on File Information – No Response to Letter in APPENDIX C - ANNEX 7

VIA DOUBLE REGISTERED MAIL

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds and our recent letter to you dated (date) . . .

WHEN INFORMATION WAS TO BE SENT IN:

. . . asking you to send information/documents to this office within thirty (30) days from the date of that letter.

No response was received from you.

WHEN INFORMATION WAS TO BE PROVIDED AT INTERVIEW:

. . . asking you to attend an interview at this office on (date and time).

You did not appear for this interview.

As indicated in our previous letter, a decision about whether you meet all requirements of the Immigration Act has been made based upon information on your file. On (date), a representative of the Minister of Citizenship and Immigration reviewed your file and decided to refuse your application for landing. This refusal was based upon insufficient information to make a proper decision about whether you met all requirements of A5(2) due to your lack of response for more information on this matter.

CLOSING FOR IN-STATUS CASES:

- Your visitor status expires on (date). If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your visitor status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.

CLOSING FOR OUT-OF-STATUS CASES:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for section 27 report, etc.)

If you require clarification or more information, visit the CIC Web site or telephone the Call Centre in your area:

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Toronto	973-4444
Montreal	496-1010
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The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Note: Issue appeal rights if applicant was sponsored as a member of the family class.

ANNEX 9

Invitation to Landing Interview

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

Previous correspondence, informed that you had been granted an exemption from the immigrant visa requirement and that you must meet all other statutory requirements of the Immigration Act [A5(2)]. A final determination on whether you meet statutory requirements can only be made at a landing interview.

FOR CPC-V:

Your application has been referred to the Canada Immigration Centre in (city/town). You will receive a letter from this office when they have scheduled your landing interview.

FOR CICs

A landing interview has been scheduled for you on (date and time)at the Canada Immigration Centre,(address).

- **If you cannot attend this interview, please write to this office immediately, explaining why.**
- **Failure to appear for this interview may be perceived as lack of interest in permanent residence and your application could be refused.**
- **If you are currently in receipt of welfare or social services benefits, please write to this office as soon as possible explaining your situation.**

Please note:

- **If you are currently employed but were receiving welfare or social services benefits when you submitted your application for permanent residence, please bring proof of employment and income and termination of benefits with you to the above noted interview.**
- **If you have received welfare or social services benefits at any time since applying for permanent residence, please bring proof of employment and income and termination of benefits with you to the above noted interview.**

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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ANNEX 10

Application for Landing Refused – No Show for Landing Interview

VIA DOUBLE REGISTERED MAIL

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. Previous correspondence informed that you had been granted an immigrant visa exemption and that processing of your application would continue to determine whether you met all other statutory requirements [A5(2)].

A recent letter invited you to attend a landing interview at this office for that purpose. You did not appear for this interview nor did you contact this office to explain why. The letter scheduling your landing interview informed you that failure to appear for this interview could be perceived as lack of interest in permanent residence and your application could be refused.

Failure to appear for your landing interview scheduled on (date and time), has been interpreted as lack of interest in concluding your application for permanent residence. As a result, your application for permanent residence is refused and the immigrant visa exemption previously granted has no further effect.

CLOSING FOR IN-STATUS CASES:

- Your visitor status expires on (date). If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your visitor status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a report as a person described in subsection 19(1)(?).

CLOSING FOR OUT-OF-STATUS CASES:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for section 27 report, etc.)

If you require clarification or more information, visit the CIC Web site or telephone the Call Centre in your area:

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Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

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Note: Issue appeal rights if applicant was sponsored as a member of the family class.

ANNEX 11

Appears Landing will be refused for A19(1)(b)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. In previous correspondence, you were informed that an immigrant visa exemption had been granted and that your application for permanent residence would continue to be processed to determine whether you met all other statutory requirements of the Immigration Act [A5(2)], for example, medical, security, passport, etc.

You were also advised that your application for permanent residence could be refused if you are not self-supporting, that is, in receipt of social assistance or welfare benefits, either directly or indirectly. If so, this means that you are a person described in subsection 19(1)(b) of the Immigration Act and persons described in this subsection are inadmissible to Canada. Specifically, (provide details - e.g. you are currently in receipt of welfare benefits which you have been receiving since (date)].

WHEN INFORMATION IS TO BE SENT IN:

Before a final decision is made on this matter, you have the opportunity to provide any information you would like considered. Please write to this office **within thirty (30) days of the date of this letter**. If you do not, a decision will be made based upon information on your file. **If you do not reply within 30 days and the decision is to refuse your application for landing, there is no authority to re-examine or re-open this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.**

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

WHEN INFORMATION IS TO BE PROVIDED AT INTERVIEW:

Before a final decision is made on this matter, you have the opportunity to provide any information you would like considered at an interview with you (and your sponsor). Please come to the Canada Immigration Centre located at (address) on (date and time).

If you do not attend this interview, a decision will be made based upon information on your file. If the decision is to refuse your application for landing, there is no authority to re-examine or re-open this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you cannot attend this interview, please write to this office immediately, explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

ANNEX 12

Ready for Landing but ROLF Not Paid

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

You attended a landing interview at this office on [date]. At that time, you did not pay $975 for the Right of Landing Fee nor did you show proof of a loan approval for this fee. As indicated at the interview, your application will be held open until such time as you make arrangements for a loan or payment of the Fee.

Because you are not a permanent resident of Canada, please ensure that you apply for extensions of your visitor, student or employment authorizations. If you require an application kit to extend your status in Canada or wish to apply for a Right of Landing Fee loan, please call the Call Centre in your area or visit our Web site at http://www.cic.gc.ca.

If you require clarification, more information, wish to provide a change of address or arrange another landing interview when you are able to pay the Right of Landing Fee or have obtained loan approval, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

APPENDIX D
Sample Letters

ANNEX 1
Sponsor's Notification of Appeal Rights

Application for Permanent Residence supported by Family Class Sponsorship and Refused at Landing Stage

This refers to the Undertaking of Assistance you submitted in support of the application for permanent residence made by (name of principal applicant).

The application for permanent residence has been refused because (name of prinicpal applicant) does not meet requirements of the Immigration Act. Attached is a copy of the letter sent to your relative, explaining the refusal.

Subsection 77(3) of the Immigration Act allows Canadian citizen or permanent resident sponsors to appeal the refusal of an application for permanent residence made by a member of the family class. An appeal may be made to the Immigration Appeal Division on the following grounds:

a) law or fact, or mixed law and fact; and/or

b) compassionate or humanitarian grounds that warrant special consideration.

If the Appeal Division finds that an applicant is not a member of the family class, it does not have jurisdiction to consider the appeal on compassionate or humanitarian grounds.

If you wish to appeal the refusal decision, complete the enclosed Notice of Appeal form. Mail it with copies of this letter and your relative's refusal letter to the appropriate office listed on the form titled **Important Instructions**. Choose the address of the office responsible for the province where you live. **The completed Notice of Appeal and copies of letters must be received within 30 days from the date you receive this letter.**

If you have paid a Right of Landing Fee or have been granted a loan and you decide to appeal, you should not apply for a refund until your appeal is finally decided. If your appeal is not successful, you may apply for a refund of the fee or your loan payments at that time.

If you decide not to appeal the decision, please read the paragraph below. By signing, you agree with this statement and are requesting a refund of loan payments or the Right of Lan. ding fee.

> **I do not wish to appeal the refusal of the application for permanent residence of (name of principal applicant) and I request a refund of either the Right of Landing fee I submitted with the Undertaking of Assistance or of loan payments I have made on the loan given to me for the Right of Landing fee.**

_____ _____

Signature of Sponsor Date

To receive a refund in about six weeks, please mail this letter with your signature above and a copy of the refusal letter sent to your relative to:

Case Processing Centre
Vegreville, AB
T9C 1W3

If you require further assistance, visit the CIC Web site or telephone the Call Centre in your area, quoting the client number shown at the top right of this letter.

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

ANNEX 1
(ATTACHMENT)
Notice of Appeal Form (IRB/CISR 428)

Immigration and Refugee Board / Commission de l'immigration et du statut de réfugié

Appeal Division

Citizenship and Immigration Client ID No.: _____

Sponsor's Date of Birth: _____ (Day Month Year)

Location where Application for Visa was Made _____ (Visa Office)

NOTICE OF APPEAL
Section 77 of the *Immigration Act*

_____ (FAMILY NAME) _____ (GIVEN NAMES), Appellant

THE MINISTER OF CITIZENSHIP AND IMMIGRATION, Respondent

I appeal to the Immigration and Refugee Board, Appeal Division, from the refusal of the sponsored application for landing made by:

FAMILY NAME - GIVEN NAME	RELATIONSHIP TO ME	DATE OF BIRTH (D-M-Y)

I was informed of the reasons for the refusal on the ____ day of _____ 19 , by letter dated the ____ day of _____ 19

Signed at _____ on the ____ day of _____ 19 . _____ Appellant

A COPY OF THE REFUSAL LETTER IS ATTACHED ☐

Check the appropriate box:

I wish to have my hearing conducted in English ☐ French ☐

I require the services of an interpreter proficient in the _____ (language/dialect) language (and dialect, if applicable) at the hearing.

MY ADDRESS IS:

_____ Number and Street _____ City _____ Province _____ Postal Code

Telephone Number (Residence): ( ) _____ (Work): ( ) _____
Area Code Area Code

Facsimile Number (Residence): ( ) _____ (Work): ( ) _____
Area Code Area Code

NOTE: *You have the right to be represented by counsel, at your own expense. You must notify the Immigration and Refugee Board, as soon as possible, of the name and address of your counsel. If you have already retained counsel, please complete the section below.*

I AUTHORIZE THE FOLLOWING PERSON TO BE MY COUNSEL

Name: _____ (Mr. Mrs. Ms. Miss) Occupation: _____

_____ Number and Street _____ City _____ Province _____ Postal Code

Telephone Number: ( ) _____ Facsimile Number: ( ) _____
Area Code Area Code

IMPORTANT:

1. You must file this Notice of Appeal with the Appeal Division Registry of the Immigration and Refugee Board within THIRTY (30) DAYS after the day on which you were informed, in writing, by the Minister of Citizenship and Immigration, of the reasons for the refusal of the sponsored application for landing.
2. If you have not already done so, you must notify the Immigration and Refugee Board as soon as possible, in writing, of the name and address of your counsel. You must also notify the Immigration and Refugee Board immediately, in writing, if you change your address or your counsel. Please send any future correspondence to the Registry of the Immigration and Refugee Board at the appropriate address given on the attached instruction page.

FOR OFFICE USE ONLY
FILED ON:

Version française au IRB/CISR428 (6/98)

IMPORTANT INSTRUCTIONS

You have the right to appeal the refusal of the sponsorship application of your family member(s) to the Appeal Division of the Immigration and Refugee Board, in accordance with section 77 of the Immigration Act.

A Notice Of Appeal is attached for that purpose. This form must be completed in English or in French. Once the form is completed, it must be filed with the Registry of the Immigration and Refugee Board within thirty (30) days after the day on which you were informed, in writing, by the Minister of Citizenship and Immigration, of the reasons for the refusal. Listed below are the addresses of the Immigration and Refugee Board offices and the areas which they serve. Please insure that you file your Notice of Appeal with the Immigration and Refugee Board office which serves the province or territory where you live. This Notice can be filed by mail or by facsimile. It is not necessary to file the Notice in person.

The Immigration Appeal Division Rules require that, wherever practicable, the appellant is to provide a copy of the refusal letter issued by the visa office. If you file the refusal letter together with the Notice to Appeal, the Appeal Division may be able to process your appeal more quickly.

You have the right to be represented by counsel, at your expense. If you are represented, please notify the Immigration and Refugee Board of your counsel's name, address, telephone and facsimile numbers. You must notify the Immigration and Refugee Board immediately if you change your address and/or if the name and address of your counsel changes.

AREA OF RESPONSIBILITY

Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Ottawa

Office: Montreal

Immigration and Refugee Board
200 René-Lévesque Boulevard West
East Tower, Room 102
Montreal, Quebec
H2Z 1X4
Telephone: (514) 283-7733
Facsimile: (514) 283-0164

AREA OF RESPONSIBILITY

Ontario, Manitoba, Saskatchewan

Office: Toronto

Immigration and Refugee Board
74 Victoria Street
Toronto, Ontario
M5C 3C7

Telephone: (416) 954-1000
Facsimile: (416) 954-1165

AREA OF RESPONSIBILITY

British Columbia, Alberta, Yukon, North West Territories

Office: Vancouver

Immigration and Refugee Board
300 West Georgia Street, 16th floor
Vancouver, British Columbia
V6B 6C9

Telephone: (604) 666-5946
Facsimile: (604) 666-3043

INSTRUCTIONS IMPORTANTES

Vous avez le droit de porter en appel le rejet d'une demande parrainée d'établissement présentée par un parent à la Section d'appel de la Commission de l'immigration et du statut de réfugié, conformément à l'article 77 de la *Loi sur l'immigration*.

Un Avis d'appel est joint à cette fin. Ce formulaire doit être rempli en anglais ou en français **et signifié au greffe de la Commission de l'Immigration et du statut de réfugié dans les trente (30) jours suivant la date à laquelle vous avez été informé, par écrit, par le ministre de la Citoyenneté et de l'Immigration, des motifs du rejet de la demande.** Vous trouverez ci-après les adresses des bureaux de la Commission et les zones qu'ils desservent. Veuillez vous assurer de déposer votre Avis d'appel au bureau de la Commission de l'immigration et du statut de réfugié qui dessert votre province ou territoire de résidence. Vous pouvez déposer votre Avis par courrier ou par télécopieur. Il n'est pas nécessaire de le faire en personne.

***Les Règles de la section d'appel de l'immigration* exigent que l'appelant fournisse, si possible, une copie de la lettre de refus émise par le bureau des visas. Si vous déposez votre lettre de refus avec l'Avis d'appel, la Section d'appel peut être en mesure de traiter votre appel plus rapidement.**

Vous avez le droit d'être représenté à vos frais par un conseil. Si vous êtes représenté, vous devez fournir à la Commission de l'immigration et du statut de réfugié le nom, l'adresse et les numéros de téléphone et de télécopieur de votre conseil. **Si vous changez d'adresse ou si le nom et l'adresse de votre conseil changent, vous devez en aviser immédiatement la Commission de l'Immigration et du statut de réfugié.**

ZONES DE RESPONSABILITÉ

Québec, Nouveau-Brunswick, Nouvelle-Écosse, Ottawa
Île-du-Prince-Édouard, Terre-Neuve

Bureau : Montréal

La Commission de l'immigration et du statut de réfugié
200, boulevard René-Lévesque Ouest
Tour Est, pièce 102
Montréal (Québec)
H2Z 1X4
Téléphone : (514) 283-7733
Télécopieur : (514) 283-0164

ZONES DE RESPONSABILITÉ

Ontario, Manitoba, Saskatchewan

Bureau : Toronto

La Commission de l'immigration et du statut de réfugié
74, rue Victoria, pièce 400
Toronto (Ontario)
M5C 3C7

Téléphone : (416) 954-1000
Télécopieur : (416) 954-1165

ZONES DE RESPONSABILITÉ

Colombie-Britannique, Alberta, Yukon, Territoires du Nord-Ouest

Bureau : Vancouver

La Commission de l'immigration et du statut de réfugié
300, rue Georgia Ouest, 16e étage
Vancouver (Colombie-Britannique)
V6B 6C9

Téléphone : (604) 666-5946
Télécopieur : (604) 666-3043

ANNEXE 2

Sponsorship Withdrawal Request REFUSED

(Letter to Sponsor)

This refers to the Undertaking of Assistance you submitted in support of the application for permanent residence from within Canada on humanitarian and compassionate grounds made by (name of principal applicant).

We have received your correspondence of (date) indicating your desire to withdraw or cancel this Undertaking.

On (date) a representative of the Minister of Citizenship and Immigration granted your relative's request for an exemption from the immigrant visa requirement. This exemption was granted, in part, on the basis of the Undertaking you submitted. The exemption decision is final and would only be revisited if there were evidence of fraud or misrepresentation which does not appear to be the case in this application. **As a result, your request to withdraw or cancel the Undertaking cannot be granted and fees paid in relation to the Undertaking and application for permanent residence are not refundable.**

As a sponsor, you have signed a promise to provide for the lodging, care and support of your relative(s) as may be required. You must support your relative(s) for (x) years from the date (he/she; they) become permanent residents. Your obligations to provide adequately for your relative(s) during the entire sponsorship period, as required, are as follows:

- a place to live;
- food, clothing, other living expenses; and
- financial assistance to ensure that they do not require support from any federal or provincial assistance program, or welfare or social assistance from a municipal program.

If payments are made to your relative(s) from any federal, provincial or municipal assistance program, you will be in breach of the agreement made when you signed the Undertaking to support your relatives in Canada. You may have to repay any benefits received by your relatives and you will not be allowed to sponsor any other relatives to Canada.

If you require clarification, more information or wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

ANNEX 3

Sponsorship Withdrawal Request APPROVED

This refers to the Undertaking of Assistance you submitted in support of the application for permanent residence from within Canada on humanitarian and compassionate grounds made by (name of principal applicant).

We have received your correspondence of (date) indicating your desire to withdraw or cancel this Undertaking.

[APPLICATIONS RECEIVED -- NO DECISIONS MADE ON UNDERTAKING OR H&C APPLICATION]

Although the application and Undertaking were received, no decisions were made on either matter at the time you contacted this office. We are returning the Undertaking to you with the notation "not processed at request of sponsor" and have updated our records to reflect your wish to withdraw or cancel your sponsorship.

[APPLICATIONS RECEIVED – UNDERTAKING APPROVED BUT NO H&C DECISION MADE]

Your Undertaking in support of your relative's application was approved on (date). No decision, however, has been made on your relative's application for permanent residence.

As a result, your request to withdraw or cancel the Undertaking of Assistance on behalf of (name of principal applicant) can be granted, however, there is no entitlement to a refund of any fees paid in relation to the undertaking or application. We will review your relative's application for permanent residence with the knowledge that it is not supported by a sponsorship undertaking. You may wish to keep this letter as confirmation that you do not have a sponsorship obligation to (name of principal applicant)

If you require clarification, more information or wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

c.c. Applicant for Permanent Residence

APPENDIX E
Sample Letters

ANNEX 1
Ineligible for H&C Request – Client is Permanent Resident or Canadian Citizen

We are returning your application for permanent residence from within Canada based on humanitarian and compassionate (H&C) factors, including cost recovery processing fees. As a (permanent resident/Canadian citizen), you are not eligible for consideration of an H&C application as you currently have permission to reside in Canada.

Specifically, I note that you are (describe client's situation/the process examining their loss of status). If it is ruled that you have not lost/should not lose your (permanent residence/Canadian citizenship), there is no need for an H&C application. If, however, the ruling concludes that there is a loss of status, you would then be eligible to submit an H&C application.

If you require clarification, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

ANNEX 2

Ineligible for H&C Request – Client may be a Permanent Resident (currently in Canada with visitor status)

We are returning your application for permanent residence from within Canada based on humanitarian and compassionate (H&C) factors, including cost recovery processing fees. As a person who was a permanent resident and who has been re-admitted to Canada as a visitor, we cannot consider a request for permanent residence until you attend a **re-determination interview** at the Canada Immigration Centre closest to where you reside.

This re-determination interview will be conducted at the Canada Immigration Centre to examine the reasons and length of your absence from Canada and is for the purpose of determining whether you have, in fact, lost your permanent resident status in Canada. If it is decided that you have not lost or should not lose your permanent resident status, there is no need for an H&C application. If, however, the ruling concludes that there is a loss of status and you agree with this ruling, you would then be eligible to submit an H&C application. If you do not agree and you challenge this ruling, you will not be eligible to submit an H&C application until a final determination is made with respect to your permanent resident status.

Until there is a final determination on your permanent resident status, please ensure that you apply for extensions of your visitor status that expires on [date]. If you require an application kit to extend your status in Canada, please contact the Call Centre in your area or visit our Web site at http://www.cic.gc.ca.

If you require clarification, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre in your area:

Vancouver	666-2171
Toronto	973-4444
Montreal	496-1010
Elsewhere in Canada (toll-free)	1-888-242-2100

By copy of this letter, we are notifying the Canada Immigration Centre in your area of the need for a re-determination interview.

You may wish to contact that office, quoting the client number in the upper right corner of this letter. This is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

c.c. Canada Immigration Centre - Attn: Manager

IMMIGRATION

Canada

Chapter IP 8
Processing Student Authorizations



Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

Processing Student Authorizations

Abbreviations and Short Forms	
A	*Immigration Act*
ACISI	Advisory Committee on International Students & Immigration
CAQ	Certificat d'Acceptation du Québec
CAIPS	Computer Assisted Information Processing System
CIC	Citizenship and Immigration Canada
CICs	Canada Immigration Centres
CIDA	Canadian International Development Agency
CPCs	Case Processing Centres
CPCV	Case Processing Centre, Vegreville
CSQ	Certificat de Sélection du Québec
DFAIT	Department of Foreign Affairs & International Trade
FOSS	Field Operations Support System
IMM 1249	Student Application Form in Canada
IMM 1294	Student Application Form Abroad
IMM 1208	Student Authorization Form generated by non–CAIPS visa offices
IMM 1442	Student Authorization Form generated by FOSS.
MRCIQ	Ministère des Relations des Citoyens et de l'Immigration du Québec
POE	Port of Entry
R	*Immigration Regulations*
SIQ	Service de l'Immigration du Québec
VEC	Validation Exempt Code

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1. LEGISLATIVE AUTHORITY AND POLICY DIRECTION

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1.1 The Act

1.1.1 Immigration objectives

A3 It is hereby declared that Canadian immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and international interests of Canada, recognizing the need

(e) to facilitate the entry of visitors into Canada for the purpose of fostering trade and commerce, tourism, cultural and scientific activities and international understanding.

1.1.2 Applications by students

A10 Except in such cases as are prescribed, every person, other than a Canadian citizen or a permanent resident, who seeks to come into Canada for the purpose of

(a) attending any university or college authorized by statute or charter to confer degrees,

(b) taking any academic, professional or vocational training course at any university, college or other institution not described in paragraph (a),

shall make an application to a visa officer for and obtain authorization to come into Canada for that purpose before the person appears at a port of entry.

1.1.3 No application in certain circumstances

A17.1 Except in such cases as are prescribed, no person in Canada may make an application to an immigration officer to obtain authorization

(a) to attend any university or college or take any academic, professional or vocational training course.

1.1.4 Authority to make regulations

A114(1) The Governor in Council may make regulations

(h) prescribing the maximum duration of student and employment authorizations.

1.2 The Regulations

1.2.1 Definition

R2(1) In these Regulations, "student authorization" means a document issued by an immigration officer whereby the person to whom it is issued is authorized

(a) to attend a university or college authorized by statute or charter to confer degrees, or

(b) to take an academic, professional or vocational training course at a university, college or other institution not described in paragraph (a).

1.2.2 Requirement to be in possession of a student authorization

R13(4) Every visitor who is required to obtain a visa, student authorization or employment authorization before he appears at a port of entry shall be in possession of a valid visa, student authorization or employment authorization, as the case may be, when he appears at a port of entry.

R14.1 Subject to sections 14.2 and 14.3, no person, other than a Canadian citizen or a permanent resident, shall attend any university or college or take any academic, professional or vocational training course in Canada unless that person possesses a valid subsisting student authorization.

1.2.3 Where authorization not required

R14.2 Section 14.1 does not apply to a person who seeks to come into Canada for the purpose of attending a university or college, or taking an academic, professional or vocational training course or a person in Canada who is attending or seeks to attend a university or college or is taking or seeks to take an academic, professional or vocational training course if

(a) the person is the dependant of any diplomatic or consular officer, representative or official, properly accredited, of a country other than Canada or of the United Nations or any of its agencies or of any

intergovernmental organization of which Canada is a member who is coming into or is in Canada to carry out official duties or any member of the staff of that officer, representative or official, or

(b) the sole course taken or to be taken is a French or English language training course that is three months or less in duration.

R14.3(1) There shall be exempt from the requirement to obtain a student authorization, for any of the purposes referred to in section 14.1, any person

(a) who was in Canada on January 1, 1989 or had, prior to that date, been directed to return to the United States pursuant to subsection 23(5) of the Act to await the availability of an adjudicator to preside at an inquiry to be held on or after that date; and

(b) whose intention to make a claim to be a Convention refugee was signified by the person before January 1, 1989, to

(i) an immigration officer, who recorded that intention before that date, or a person acting on an immigration officer's behalf, who an immigration officer is satisfied recorded that intention before that date, or

(ii) an adjudicator in the course of an inquiry respecting the person's status in Canada.

R14.3(2) No exemption under subsection (1) applies to a person who

(a) has been determined to be a Convention refugee under the Act as it read before January 1, 1989;

(b) is the subject of a removal order or a departure order and has not been removed from, or has not otherwise left, Canada;

(c) has failed to appear for

(i) completion, pursuant to paragraph 12(3)(a) of the Act, of an examination,

(ii) an inquiry respecting that person's status in Canada, or for the continuation of such an inquiry, where the person was given an appointment therefor, or

(iii) an examination under oath with respect to the person's claim to be a Convention refugee, or for the continuation of such an examination, where the person was given an appointment therefor; or

(d) is described in paragraph 19(1)(c), (e), (g) or (j) or 27(2)(c) of the Act.

R14.3(3) There shall be exempt from the requirement to obtain a student authorization, for any of the purposes referred to in section 14.1, any person who is a dependant of a person exempt under subsection (1).

1.2.4 Documents to accompany application for student authorization

R15(1) Every application for a student authorization shall be accompanied by

(a) a letter from a university, college or other institution referred to in paragraph 10(a) or (b) of the Act accepting the applicant to attend or to take any specified course at the university, college or other institution;

(b) sufficient documentation to enable an immigration officer to satisfy himself that the applicant has sufficient financial resources available to him, without engaging in employment in Canada,

(i) to pay his tuition fees,

(ii) to maintain himself and any dependants who will come into Canada during the period for which he seeks a student authorization, and

(iii) to pay the transportation costs to and from Canada for himself and any dependants referred to in subparagraph (ii); and

(c) the consent in writing of the government of the province in which the applicant wishes to study where such consent is required by that government pursuant to an agreement entered into by the Minister with that government pursuant to section 108 of the Act.

1.2.5 Exemptions from certain documentation

R15(1.01) Paragraphs (1) (a) and (b) do not apply in respect of an application to attend a primary or secondary school that is submitted by a dependant of a holder of a student authorization or employment authorization.

R15(1.1) Subparagraph 15(1)(b)(ii) does not apply in respect of an application submitted by

(a) a person whose claim to Convention refugee status has been referred to the Refugee Division pursuant to subsection 46.02(2) or 46.03(5) of the Act, as amended by S.C. 1988, c.35, section 14; or

(b) a dependant of a person referred to in paragraph (a).

1.2.6 Where authorization not required before arriving at Port of Entry

R15(2) A person who seeks to come into Canada for a purpose referred to in paragraph 10(a) or (b) of the Act is not required to obtain a student authorization before that persons appears at a port of entry if that person is a dependant of

(a) [Revoked SOR/89–38]

(b) a member of the armed forces of a country that is a designated state for the purposes of the Visiting Forces Act who is coming to or is in Canada in order to carry out his official duties, including a person who has been designated as a civilian component of that visiting force;

(c) a clergyman or member of a religious order coming to or in Canada for the temporary carrying out of his religious duties;

(d) an employee of a foreign news company coming to or in Canada for the purpose of reporting on Canadian events;

(e) a person coming to or in Canada to engage in athletic or other sport activities or events as a player, manager, coach, trainer or administrative employee for a Canadian–based team, group or organization or a person engaged as a referee, umpire or other similar official with respect to any athletic or other sport activity or event in Canada;

(f) a person in possession of a valid and subsisting student authorization;

(g) a person in possession of a valid and subsisting employment authorization; or

(h) a representative of a foreign government sent by that government to take up duties with a federal or provincial agency pursuant to an exchange agreement with Canada.

R15(3) A person who seeks to come into Canada for a purpose referred to in paragraph 10(a) or (b) of the Act is not required to obtain a student authorization before that persons appears at a port of entry if that person is

(a) a national of the United States;

(b) a person who has been lawfully admitted to the United States for permanent residence;

(c) a resident of Greenland;

(d) a resident of St.Pierre and Miquelon; or

(e) a person whose application for a student authorization has been approved in writing by a visa officer but to whom the authorization has not been issued.

1.2.7 Where application for authorization may be made in Canada

R16(1) A person in Canada may make an application for the purpose of obtaining a student authorization

(a) if that person is

(i) a person referred to in subsection 15(2);

(ii) a person in possession of a valid and subsisting student authorization;

(iii) a person in possession of a permit issued by the Minister under section 37 of the Act or a dependant of that person,

(iv) a person whose claim to Convention refugee status has been referred to the Refugee Division but the claim has not been finally determined,

(v) a dependant of a person referred to in subparagraph (iv), or

(vi) a person referred to in paragraph 15(3)(e);

(b) where the taking of the course for the purpose of which he makes an application for a student authorization would only be incidental and secondary to the main purpose of his presence in Canada; or

(c) if that person has been authorized to remain in Canada as a visitor pursuant to subsection 17(2.1) of the Act and was in possession of a valid and subsisting student authorization at the time the person ceased to be a visitor.

1.2.8 Course criteria

R17(1) A student authorization may not be obtained by any person for the purpose of taking any academic, professional or vocational training course unless that course

(a) is of at least six months duration and at the rate of at least twenty–four hours f instruction per week;

(b) is given at any institution described in paragraph 10(a) of the Act or any other publicly–funded institution;

(c) is recommended by a minister of the Government of Canada, other than the Minister of Employment and Immigration, or by a minister of the government of any province or by any agency of the Government of Canada or the government of any province;

(d) is incidental and secondary to the main purpose of that person's presence in Canada; or

(e) involves upgrading of skills or language training and is given at an institution that operates under a provincial or federal licence.

R17(2) No visitor may be granted entry for the purpose of taking any academic, professional or vocational training course at any university, college or other institution listed in Schedule III.

1.2.9 Prescribed Institutions

Schedule III Three institutions are listed for which no visitor are to be granted entry:

- General Welding School, 61 Jarvis Street, Toronto
- Radvis University, Charlottetown, PEI
- The Way College of Biblical Research, London, ON

1.2.10 Terms and Conditions

R23(3) Where an immigration officer, senior immigration officer or adjudicator may impose conditions under the Act in respect of a visitor, the only terms and conditions that may be imposed are the following:

(a) a prohibition against engaging in employment in Canada;

(b) a prohibition against attending any university, college or other institution and against taking any academic, professional or vocational training course at any university, college or other institution;

(c) attendance at a university, college or other institution specified by the immigration officer, senior immigration officer or adjudicator;

(h) the period in which the visitor may remain in Canada;

(i) the area within which the visitor may travel in Canada;

(k) The times and places at which the visitor shall report for medical examination, surveillance or treatment or for any other purpose;

(m) a prohibition against attending any university, college or other institution listed in Schedule III and against taking any academic, professional or vocational training course at any university, college or other institution listed in that Schedule.

1.3 Fees Regulations

1.3.1 Processing fee payable by

R7(1) The fee prescribed in Column III of the schedule (namely $125) is payable, at the time an application for a student authorization is made.

1.3.2 Exemptions from processing fee

R7(2) The following persons need not pay the fee:

(a) a person described in paragraph 5(2)(a), (b), (c) or (m), namely

5(2)(a) a person in Canada who has made a claim to be a Convention refugee that has not yet been decided by the Refugee Division and any dependant of the person;

5(2)(b) a person whom the Refugee Division has determined to be a Convention refugee and any dependant of the person;

5(2)(c) a person whom a visa officer has determined to be a Convention refugee seeking resettlement and any dependant of the person;

5(2)(m) an officer of the United States Immigration and Naturalization Service or of the United States Customs carrying out pre–inspection duties, an American member of the International Joint Commission, a United States grain inspector or any other United States Government official in possession of an official United States Government passport and assigned to a temporary posting in Canada, and their dependants.

(b) a member of a class of persons designated by the Governor in Council pursuant to subsection A6(3) and paragraph A114(1)(d), and their dependants;

(c) a person described in paragraph 3(2)(a) and their dependants, namely

3(2)(a) a properly accredited diplomat, consular officer, representative or official of a country, other than Canada, of the United Nations or any of its agencies, or of any intergovernmental organization in which Canada participates, or a member of the suite of any such person and their dependants;

(d) a person described in paragraph 3(2)(b) and their dependants, namely

3(2)(b) a member of the armed forces of a country that is a designated state for the purposes of the *Visiting Forces Act*, including a person who has been designated as a civilian component of that visiting force pursuant to paragraph 4(c) of that Act, and their dependants;

(e) a dependant, studying at the secondary school level or lower, of a person described in paragraph 3(2)(c), namely

3(2)(c) a clergyman, a member of a religious order or a lay person who is to assist a congregation or a group in the achievement of its spiritual goals where the duties to be performed by the person are to consist mainly of preaching doctrine, presiding at liturgical functions or spiritual counselling, and their dependants;

(f) a student who is seeking renewal of the student authorization and who has become temporarily destitute through circumstances totally beyond their control or the control of any person on whom the student is dependent for financial resources; and

(g) a person who is in or coming into Canada, under an agreement between Canada and a foreign country or an arrangement entered into with a foreign country by the Government of Canada that provides for reciprocity of student exchange programs.

1.4 Policy direction

1.4.1 An issue of competitiveness

Foreign students are considered a growth industry for Canada, as they are for the rest of the industrialized world. CIC is committed to putting in place guidelines and procedures which will streamline program management and simplify processing for foreign students choosing Canada for their educational pursuits.

Canada is facing strong competition from countries such as the United States, Australia, the U.K. and others, who have adopted aggressive recruitment techniques in their search for a larger share of foreign students. Many other countries have been successful in securing a larger share of the foreign academic talent that is helping diversify their economies and boost their educational systems.

With government cutbacks and declining enrollment, foreign students represent a vital link in helping maintain a strong educational infrastructure for Canadians. Much progress has been made, but we are still lagging behind in our quest to attract foreign students in greater numbers.

1.4.2 Some statistics

In 1990–91, there were 1.5 million foreign students at the post secondary level around the world. Of these, Canada received approximately 3%. In 1995, the 77,600 foreign students studying in Canada generated $2.3 billion in economic activity and 21,000 jobs. That same year, posts abroad issued close to 30,000 student authorizations, roughly half to post secondary students.

1.4.3 Administration

At NHQ, the Economic Policy & Programs Division, Selection Branch, is responsible for the Foreign Student program. Branch responsibilities encompass a wide spectrum from policy development, to program management, procedural guidelines, monitoring functions, stakeholder consultations and customer service.

1.4.4 Stakeholders

In an effort to make the consultation process more systematic and improve our ability to carefully monitor our policies and programs, the Branch established a formal Advisory Committee on International Students and Immigration. The Committee includes core representation from government and non–government organizations, and access to a wide range of interest groups which are called upon to participate in discussions on any number of issues. Committee membership is listed at the end of this Chapter.

1.4.5 Committee on International Students and Immigration: Mandate

The Committee is chaired by the Director of Economic Policy and Programs, and meets twice a year to exchange information, review current issues and resolve difficulties. The Committee's mandate has been formulated as follows:

- To monitor and discuss issues relating to international students and their dependents, including those enrolled in commercial, technical education and training programs;
- to make suggestions to CIC on issues affecting international students and their dependents;
- to maintain contact with committee members between meetings to resolve urgent issues;
- to monitor and discuss issues concerning other foreign nationals visiting Canada for research, education or practical training purposes.

1.4.6 Important progress has been made

This consultation process has helped spur important changes to immigration requirements which will streamline our programs and simplify our procedures. Among the most important...

- we have eliminated the need for letters of acceptance from school for dependents of holders of student and employment authorizations;
- we have eliminated the requirement for employment authorizations for university and community college students to work on campus;
- we have simplified financial sufficiency requirements for students and their dependants;
- we have reinforced our commitment to issuing long–term student authorizations;
- we have put forward a standard content for letters of acceptance;
- we have reached an understanding on the use of conditional letters of acceptance.

1.4.7 Immigration one of several important partners in international education

Immigration is only one of several competing factors affecting the manner in which foreign students are attracted to Canada. First and foremost is the quality and affordability of education, coupled with our economic environment and quality of life.

Although we have made good progress, there is still a strong perception that immigration is an impediment, that there are too many inconsistencies in our approaches, and that requirements are too demanding and unnecessarily complicated.

Part of the competitiveness problem lies in the fact that Canada lacks a cohesive national policy on international students. There are many separate stakeholders with many different interests. It is recognized that all stakeholders have a role to play in improving our competitive position, and that efforts need to be made right across the board, from forging a cohesive policy approach, to improving marketing strategies, to speeding up processing of applications.

CIC is a significant partner in this respect, and there are important things that we can and must continue to do. CIC's partnership with the Advisory Committee will continue to be an important aspect of this policy and program development function.

1.4.8 Setting the tone for ongoing program refinements and simplified processing

Last but not least, with the publication of this chapter, CIC has provided clear policy direction and processing guidelines which should help attain a higher level of consistency in the manner in which we are managing our foreign student programs. This chapter will be updated periodically to reflect changes and continuing improvements in this respect.

Hopefully, these improvements will assist officers in their day–to–day management of cases, and set the tone for further refinements of our procedures which will ultimately help boost Canada's competitive position.

1.4.9 Membership Advisory Committee on International Students and Immigration

GOVERNMENT	Canadian International Development Agency
	Citizenship & Immigration Canada (Chair)
	Department of Foreign Affairs & International Trade
	Industry Canada
	Council of Ministers of Education, Canada
NON–GOVERNMENT	Association of Canadian Community Colleges
	Association of Universities & Colleges of Canada
	Canadian Association of University Teachers
	Canadian Association of Graduate Studies
	Canadian Bureau of International Education
	National Association of Career Colleges
	One national student group: Canadian Federation of Students
INVITED PARTICIPANTS	Asia–Pacific Foundation
	Canadian Alliance of Student Associations
	Canadian School Boards Association
	World University Services of Canada
	Association of Canadian Bible Colleges
	British Columbia Centre for International Education
	Canadian Association of Independent Schools
	Canadian Information Centre for International Credentials
	Canadian Education Association
	Conférence des recteurs et des principaux des universités du Québec
	Fédération des conseillères et des conseillers scolaires francophones
	Federation of Independent Schools in Canada
	Organisation universitaire interaméricaine
	Inter–American Organization for Higher Education

2. SPECIAL CONSIDERATIONS AND REQUIREMENTS

2.1 Quebec program

2.1.1 Canada–Québec Immigration Agreement

Under the terms of Article 22 of the Canada–Québec Immigration Agreement, Québec's consent is required in order to admit any foreign student to the Province, except a student chosen under a Canadian government assistance program for developing countries, such as those administered by CIDA.

2.1.2 Formal consultations

Ongoing consultations with the Province of Québec are formalized under the terms of Articles 9 and 10 of the Canada–Québec Immigration which require the establishment of the Implementation Committee, co–chaired by a representative designated by both provincial and federal Ministers. The Committee, which is required to meet formally at least twice a year, also includes formal representation from the Department of Foreign Affairs and International Trade.

2.1.3 Québec's selection mechanism

The Province utilizes a Certificat d'Acceptation du Québec, as its selection mechanism for foreign students. With exemptions listed below, all applicants for student authorizations destined to a Québec educational institution at the primary, secondary, college or university level must be in possession of a "Certificat d'acceptation du Québec" (CAQ) before being eligible for a student authorization.

2.1.4 How students obtain a CAQ

If the country where the applicant is living is served by the Quebec Immigration Service, the student must apply there for a CAQ. Otherwise, students should apply for their CAQ at the Regional office of the Ministère des Relations avec Citoyens et de l'Immigration du Québec (MRCIQ) that serves the educational institution which the student will be attending.

Québec authorities will forward copies of relevant CAQs to posts abroad or otherwise confirm issuance of CAQs by telex or other means.

Students who are allowed to apply at a Port of Entry and who do not possess a CAQ are usually given a three–month permit during which time they must apply for a CAQ from the Regional office of the Ministère des Relations avec Citoyens et de l'Immigration du Québec (MRCIQ) that serves the educational institution which the students will be attending. Once a CAQ is issued, these students must apply for an extension of their status through the CPC in Vegreville.

2.1.5 Students exempt from a CAQ

The following persons do not require a CAQ to study in Québec:

a) students chosen under a Canadian government funded program for developing countries;

b) dependants of diplomats accredited to Canada;

c) students enrolled in a part–time course of study of less than 20 hours per week;

d) students enrolled in intensive French or English courses of at least 20 hours per week, for a maximum period of twelve weeks;

e) students with a valid Certificat de Sélection du Québec who have been authorized by CIC to apply for landed immigrant status from within Canada or who have applied for an immigrant visa through a visa office.

2.1.6 Countries served by MRCIQ

The Service d'Immigration du Québec has offices in the following countries:

Vienna, Austria
Brussels, Belgium
Paris, France
Hong Kong
Damascus, Syria

2.1.7 Requests for information

The educational institution which the student will be attending should fully inform applicants about the procedures that apply in Quebec.

Alternatively, students requiring information should contact the MRCIQ Information Service in Montreal by phoning (514) 864–9191. This Office is not served by fax.

2.2 Privacy Legislation

2.2.1 Releasing information

The Student Application Form includes a notation that the information provided will be protected under the *Privacy Act*.

Privacy legislation requires that information concerning clients be released only to the client. The information can be released to the client's designated representative only upon the client's written approval.

Consequently, representations should be dealt with either in person or by mail. Information should be given out over the phone only if the caller can be positively identified as either the client or the client's authorized representative.

2.2.2 Dealing with third party representatives

Foreign student advisers should be viewed by officers as legitimate and trustworthy service partners, and their concerns should be responded to promptly, within applicable service standards.

In all cases, requirements of the *Privacy Act* apply. In cases where there is no written approval from the client on the disclosure of information to such third party representative, an adviser's questions should be noted, general requirements explained, and officers should make a commitment to respond to concerns directly to the applicant.

2.2.3 Programs funded by CIDA and DFAIT

Students coming forward under special programs funded by CIDA or DFAIT are required to sign an appropriate form consenting to the release of information to the sponsoring agency. The main purpose of this

requirement is to ensure that the sponsoring agency can be contacted when such students and/or their dependants apply for permanent residence or refugee status rather than returning home once their period of study is concluded.

The main objective of these programs is to ensure that such students acquire special knowledge or training in various fields which will be beneficial to a developing country's economy or social fabric once they return. It is, therefore, imperative that these agencies be contacted if the agreement to return home is breached.

Officers should refer to section 2.5 for detailed instructions in this respect.

2.3 Cost recovery

2.3.1 Legislation

For exact legislative reference, please refer to section 1.2 of this chapter, or section 7, *Immigration Act Fees Regulations*.

2.3.2 Fees payable

Manual users should refer to the Schedule of the *Immigration Act Fees Regulations* to verify that current fees are still applicable.

Currently, processing fees applicable to student authorizations are set at $125.00.

2.3.3 Method of Payment

Fees are payable at the time application is made, and should be included with the written application. Depending on local operating conditions, fees may be payable by cash in Canadian, American or local currency at the rate of exchange set by the Mission; Visa or MasterCard; certified cheque or international money order in Canadian funds only payable to the Receiver General for Canada.

2.3.4 Exemptions

The following persons are exempt from paying the processing fee:

a) persons who have been determined to be Convention refugees or members of a designated class prior to their arrival in Canada, and their dependants;

b) persons in Canada whose claim to be Convention refugees has not yet been decided by the Refugee Division, and their dependants;

c) Diplomats accredited to Canada, consular officers, representatives or officials of a foreign country, and their dependants;

d) dependants of persons who are employed by Canadian charitable institutions, or dependants of persons who are employed as a clergyman, a member of a religious order or a lay person to assist a congregation in its spiritual goals where the duties to be performed by that person consist mainly of preaching doctrine, spiritual counselling, when such dependants are studying at the secondary level or below;

e) students seeking renewal of their student authorization who have become temporarily destitute through circumstances totally beyond their control or the control of any person on whom they are dependent for financial resources;

f) members of a visiting force within the meaning of the *Visiting Forces Act*, and their dependants;

g) a person who is in Canada or who is coming into Canada under an agreement between Canada and a foreign country or an arrangement entered into with a foreign country by the Government of Canada that provides for reciprocal educational opportunities.

2.4 Prescribed institutions

2.4.1 Legislation

R17(2) requires that no visitor may be granted entry for the purpose of taking any academic, professional or vocational training course at any university, college or other institution listed in Schedule III. This Schedule currently lists three institutions for which no visitors are to be granted entry:

- General Welding School, 61 Jarvis Street, Toronto
- Radvis University, Charlottetown, P.E.I.
- The Way College of Biblical Research, London, Ontario

2.4.2 Making a recommendation to prescribe an institution

CIC has the authority to prescribe educational institutions which may be engaged in unethical recruitment or dubious business practices or which, in other ways, exploit potentially vulnerable foreign students. Students applying to these institutions should not be granted a student authorization.

When such institutions are drawn to their attention, Regional Directors of Immigration should investigate any allegations and advise CIC NHQ of any institution which they consider warrants inclusion in Schedule III, outlining their reasons for this recommendation.

2.4.3 Factors to be considered in prescribing an institution

Following are some of the factors which should be considered in making an assessment on the need to prescribe an institution:

a) whether the courses of study meet the requirements of R17(1)(a) specifying that these be of at least six months duration and at the rate of at least twenty–four hours of instruction per week;

b) whether the institution is registered in accordance with provincial legislation. Institutions not meeting this basic requirement should be recommended for prescription;

c) whether the institution operates in accordance with provincial legislation and concerns, especially as they relate to the refund of tuition fees, finances and advertising;

d) whether the institution has been involved in misrepresentation of any description in areas such as advertising or promotion overseas regarding the existence, level or quality of its courses; the transferability of credits earned; the availability and quality of any accommodation provided; the quality of facilities and instructional materials; the credentials of staff; its general operations in Canada. Institutions whose facilities are so poor that they are incapable of keeping students for the duration of the course of study should be considered suspect;

e) whether any evidence of mind–abuse practices, para–military training or harassment of present or former students exists. Allegations of this type should be investigated and reported on a priority basis.

In exceptional cases, depending on the relative "weight" or severity of the criterion, the existence of only one factor may provide adequate grounds for recommending that an educational institution be prescribed. Generally, however, it will be the existence of a number of factors which leads to such a decision.

2.4.4 Sources of information

Comments or reaction of visa officers and officials in countries where recruitment is undertaken, of CIC officials, immigration officers and CIC stakeholders should also be taken into consideration and form part of a recommendation to prescribe an institution. Other useful sources of information could include current and former students, current and former teaching staff and media or other investigative reports.

2.5 Government funded programs and exchange programs

2.5.1 Government Funded Programs

The Canadian International Development Agency (CIDA) and the Department of Foreign Affairs & International Trade (DFAIT) fund a number of special programs to enable deserving foreign students to undertake university–level studies or research fellowships in Canada, as well as short–term specialized training.

2.5.2 Objective

Students coming forward under these special programs receive funds to cover their transportation, tuition, medical and living expenses. The primary objective of these programs is that students will be able to apply the knowledge, education and training they have acquired in Canada to the benefit of their own countries.

An essential aspect of these programs, therefore, requires the students to return home shortly following their period of study in Canada or the termination of the award. Since the primary objective of the program will not have been met, sponsoring agencies have made a policy decision to cease funding in cases where such change of status occurs.

2.5.3 Assessment criteria

Because of special sponsorship and funding arrangements, it can be assumed that students sponsored by CIDA and DFAIT meet the requirements relating to acceptance, institution, course of study, language and transportation. Sponsorship also indicates that sufficient funds are available for single students. Students with spouse and dependants must have additional funds in accordance with the formula outlined in sections 3.3.4 and 3.3.5. Background inquiries and medical examinations are also in order.

2.5.4 CIDA Programs

The Canadian International Development Agency (CIDA) supports the efforts of the peoples of developing countries to achieve self–sustainable economic and social development by cooperating with them in development activities. An example of such programs is those administered by the World University Services of Canada.

One of the means by which CIDA achieves this objective is by funding a number of scholarship programs allowing students from developing countries to pursue university–level studies in Canada for degree–level programs, for research fellowships, or for short term specialized training.

Students receive bursaries to pursue advanced studies in a number of disciplines where knowledge gained will benefit their country's economies. Examples of such disciplines include management and administration,

engineering and technology, agriculture, computer studies, ocean management and environmental protection, education, health and nutrition.

Scholarships are awarded to deserving students with high academic standings, good motivational skills and strong potential for significant future contributions to their country following their course of study in Canada. Students are carefully chosen based on a competitive basis, open only to those who agree to come to Canada as visitors. Applicants must make a contractual commitment with CIDA to return to their country of origin upon completion of their study program, so that they may contribute towards the development of their country.

2.5.5 Processing CIDA applications

a) Administration

The administration of all CIDA programs is delegated to various Executing Agencies such as private sector companies, universities, public organizations or embassies of recipient countries.

Usually, CIDA representatives overseas counsel sponsored students before their arrival in Canada. In some cases, CIDA delegates this task to a fellowship coordinator or an Executing Agency representative.

b) Inquiries

Any inquiries regarding program, policy and case related issues should be addressed to:

Canadian International Development Agency
Canadian Partnership Branch
200 Promenade du Portage
Hull, Québec K1A 0G4
Tel.: (819) 997–5435
Fax: (819) 997–0513

Any inquiries regarding processing procedures should be addressed to CIC Economic Policy and Programs Division, (SSE).

c) Identification Code

Officers will identify CIDA students or trainees with Code 599 on the student authorization. In addition, where a visa is issued, the notation "CIDA Student" must be included underneath the visa.

d) Validity period

Students entering Canada under programs sponsored by CIDA should be issued student authorizations on a year to year basis.

e) Refusals

When a CIDA student is found inadmissible, officers will report the case to the local CIDA representative or to the CIDA NHQ/Trainees and Awards Section noted above.

f) Change of status

CIDA students are required to return to their country of residence once their study program is completed. As a requirement of admission, CIDA has included a Consent to Release Information in its Form 656: Agreement with Respect to Training In Canada. When a CIDA sponsored student, or his/her dependants, make an application

to change their status from student to permanent resident or submit a refugee claim, officers should contact CIDA to request a copy of the individual Consent to Release Information Form. Once this form is received, officers should advise CIDA of the application for change of status.

CIC will then proceed to assess individual cases in the usual manner.

2.5.6 DFAIT Programs

The Department of Foreign Affairs and International Trade funds two programs for foreign students:

THE COMMONWEALTH SCHOLARSHIP & FELLOWSHIP PLAN

This Program is designed to provide opportunities for students of other Commonwealth countries to pursue advanced programs in Canada. The Scholarships are tenable at Canadian universities, and are intended for men and women of high intellectual promise who may be expected to make a significant contribution to their own countries on their return from study in Canada.

Scholarships are awarded for studies at the master's and doctoral levels. Awards for a Master's degree are made for two academic years and the intervening summer, except in cases where a shorter period is required. The maximum tenure of an award for a doctoral degree is four calendar years, except in cases where a shorter period is required. Doctoral research scholarships, whereby individuals enrolled in a doctoral program at a university in their home country or a third country can undertake research in Canada, are tenable for no less than a semester and for a maximum of ten months.

The continuance of all awards from year to year is conditional upon the satisfactory progress and conduct of the holder. Award holders are expected to return to their respective countries at the end of their study program.

GOVERNMENT OF CANADA AWARDS

Under this program of academic exchanges, DFAIT offers awards on an annual basis to nationals of various countries. Although the list may vary, these countries currently include France, Germany, Italy, Japan and Mexico.

These awards are intended to enable foreign nationals of high academic standing to undertake graduate studies or post–doctoral research in Canadian institutions. Awards may be applied to research or studies in all areas of the arts, the social sciences and humanities, the natural sciences and engineering.

All applications are judged on a competitive basis. The final selection is made on the basis of the academic or artistic merits of the applicant and the justification for carrying out the proposed program of study or research in Canada.

Candidates who have obtained or plan to obtain landed immigrant status in Canada are not eligible. Award holders are expected to return to their respective countries at the end of tenure or study program.

2.5.7 Processing DFAIT Applications

a) Administration

The International Council for Canadian Studies (ICCS) administers both The Commonwealth Scholarship and Fellowship Plan and the Government of Canada Awards Program, under contract with DFAIT.

b) Inquiries

Any inquiries regarding program or policy should be addressed to:

International Academic Relations Division (ICE)
Foreign Affairs and International Trade
125 Sussex Drive
Ottawa, Ontario K1A 0G2
Tel.: 613/996–1014
Fax: 613/992–5965

Any inquiries regarding case related issues should be addressed to:

International Council for Canadian Studies
325 Dalhousie Street, Suite 800
Ottawa, Ontario K1N 7G2
Tel.: 613/789–7828
Fax: 613/789–7830

Any inquiries regarding processing procedures should be addressed to CIC Economic Policy and Programs Division (SSE).

c) Identification Code

Commonwealth Scholarship and Fellowship Plan Students will be identified by Code 506 on the student authorization. In addition, where a visitor visa is issued, the notation "CSFP Student" will be written underneath the visa.

No special identification code is required for the Government of Canada Awards to Foreign Nationals Program.

d) Validity Period

At visa offices, CSFP Students will initially be issued student authorizations valid for one year. On renewal in Canada, the student authorization may be made valid for the tenure of the award.

Students under the Government of Canada Awards program are usually sponsored for one year. Their authorization should correspond to the duration of the award.

e) Refusals

When a DFAIT–sponsored student is found inadmissible, officers will report the case to ICCS.

f) Change of status

DFAIT–sponsored students are required to return to their country of residence once their study program is completed. ICCS, on behalf of DFAIT, has undertaken to obtain written consent from each student to release personal information to ICCS. When a DFAIT–sponsored student, or his/her dependents, make an application to change status from student to permanent resident or submits a refugee claim, immigration officers will contact ICCS to request a copy of the Consent to Release Information Form. Once the form is received, ICCS should be advised of the application for change of status.

CIC will then proceed to deal with the individual cases in the usual manner.

2.5.8 Exchange Programs

A number of exchange programs are sponsored by private organizations which enable foreign students to attend Canadian schools and be hosted by Canadian families, and vice versa. In most cases, these students do not

require authorizations since their length of stay is usually two to three weeks, and attendance at school is not the primary purpose of the exchange. Other programs, however, such as the Rotary International Youth Exchange Program noted below, will require an authorization.

2.5.9 Rotary Exchange Students

The Rotary International Youth Exchange Program has been operational since the mid–1920s. It involves approximately 10,000 participants ranging in age from 15 to 18. Students live with Rotary families throughout the year, and are financially supported by hosting Rotary Clubs.

The Program requires students to attend school for one year, and includes sponsored events over the summer months after completion of the academic year.

2.6 Student employment

2.6.1 Exemptions Reference Table (see APPENDIX A)

The Exemptions Reference Table in APPENDIX A lists exemptions to employment authorizations and to validation requirements which apply to foreign students.

Briefly, under the terms of R19(1)(x), full time students registered in a degree–granting course are allowed to work on the campus of the institution at which they are registered without the need for an employment authorization.

Several other categories of students are exempt from validation but must be issued an employment authorization.

These exemptions are listed clearly on the table in APPENDIX A. Subsequent sections in this Chapter provide pertinent definitions and details of such exemptions.

2.6.2 On Campus employment: exempt from authorization

Under the terms of R19(1)(x), full time students registered in a degree–granting course are allowed to work on the campus of the institution at which they are registered without the need for an employment authorization.

This exemption applies to students engaged in full–time studies at a university, community college, CEGEP, publicly funded trade/technical school or private institution authorized by provincial statute to confer degrees. Students registered in part–time courses do not qualify.

This exemption applies to students working at any number of jobs on campus, as well as students working as graduate, research or teaching assistants at facilities off campus in research related to their research grant. These facilities could include teaching hospitals, clinics, research institutes, etc., which have a formal association or affiliation with the learning institution.

a) Legislative reference

R18(1)

Subject to subsections 19(1) to (2.2), no person, other than a Canadian citizen or permanent resident, shall engage or continue in employment in Canada without a valid and subsisting employment authorization.

R19(1)

Subsection 18(1) does not apply to a person who seeks to come into Canada for the purpose of engaging in employment or a person in Canada who seeks to engage or continue in employment

R19(1)(x)

as a person who holds a student authorization and who, during the period that the person is a full–time student at the local campus of a university or college, is employed on that campus.

b) Definition of on campus

"On campus" is defined as employment facilities within the boundaries of the campus. The students are only allowed to work on the campus of the educational institution at which they are registered.

If an institution has more than one campus, the student can work at different locations on that campus provided it is within the same municipality. If an institution has campuses in different cities, the student is restricted to the institution's campus where he/she is registered.

There will be cases of students working on campus as graduate, teaching or research assistants. In certain circumstances, the work to be performed will require the student to be located at a library, hospital or research facility affiliated with the institution but located outside the physical limitations of the institution's campus. This is allowable, provided that the research being conducted is strictly related to the student's research grant.

c) Definition of employer

The employer can be the institution, faculty, student organization, private business, or private contractor providing services to the institution on the campus.

Some universities located in city centres have campus grounds widely dispersed among general populated areas. This definition includes such employers whose businesses serve the general consuming public, insofar as the place of business is technically located on the university campus.

d) Eligibility

To be eligible for employment on campus the student must:

i) be in possession of a valid and subsisting student authorization;

ii) be registered in a degree/diploma–granting course of study at an approved institution [A10(a)];

iii) be registered at the educational institution as a full–time student;

iv) work on campus at the institution to which they are registered, whether for the institution itself or for a private business located on campus.

In addition, students working as graduate assistants, teaching assistants or research assistants will be considered to be within the scope of "on campus" employment provided:

i) the student has been recommended by officials of his/her department;

ii) the work to be performed is directed by a department head or a faculty member; and

iii) the work takes place in a research institute or program in an affiliated hospital or research unit.

e) Notation on student authorization

In the case of students exempt from employment authorization, officers should include the following notation on the student authorization:

> May accept employment on the campus of the institution at which the holder is registered in full–time studies.

2.6.3 Destitute students – VE Code C05

Due to circumstances beyond their control, foreign students already in Canada sometimes find themselves completely cut off from finances on which they had been counting for their day–to–day needs, as well as for their tuition. While academic institutions do grant some leeway insofar as tuition and residence fees may be concerned, there is no source of relief for the subsistence of destitute students unless they can help themselves through employment. These students should be granted employment authorizations exempt from validation, under Code C05.

a) Eligibility

Each case should be considered on its own merit. Some cases will be self–evident such as cases of war, upheaval in home country, collapse of the banking system, etc..., while others will require further explanation by the applicant, usually at an interview with an immigration officer.

Once such students have been able to establish their destitute circumstances to the satisfaction of an immigration officer, such students should be issued employment authorizations without employment validation.

b) Validity

The employment authorization is to be issued to coincide with the duration of the current term of study, not for the duration of the entire course nor for the duration of the student authorization.

2.6.4 CIDA students – VE Code D30

This validation exemption applies to students sponsored by CIDA when the intended employment is part of the student's program as arranged by CIDA.

2.6.5 Employment integral part of course – VE Code D35

This validation exemption applies to foreign students whose intended employment forms an essential and integral part of their course of study in Canada, and whose employment has been certified as such by a responsible academic official of the training institution. This exemption does not apply to:

- medical interns and externs, resident physicians (except those in veterinary medicine);
- students of accountancy (except those who are in Canada under the terms of the Memorandum of Understanding between Canada and Malaysia).

In cases such as these, the letter provided by the educational institution should establish clearly that the work is a normal component of the academic program which all participants are expected to complete in order to receive their degree, diploma or certificate. The most commonplace example would be undergraduate co–op programs at universities and colleges.

a) Career colleges or language schools

Some students attending career colleges or language schools may also be eligible under this exemption, if there is a work practicum component to their study program. Some of the common elements to look for when these students apply under D35 include:

i) written evidence from the school that a work component is required for successful completion of the course of study. Such evidence may be in the form of a letter from the school, or a copy of the school's curriculum;

ii) details of the work to be performed. Normally, the work will be supervised, and involve a specific number of hours per term or semester. The work may be unpaid at times. The school should be in a position to name the businesses or types of businesses involved in this kind of study/work program.

b) High school students

The Province of British Columbia requires all high school students in grades 11 and 12 to obtain work experience in order to graduate. This requirement applies to students at all institutions authorized by the Ministry of Education to grant high school diplomas, whether a private or public institution.

In these cases, the employer is the school or school district, the location of employment is British Columbia and the employment is open.

Although it has been indicated to BC school authorities that the school should provide a letter to this effect, such is not imperative. If an officer knows for certain that the student is registered at the Grade 11 and/or 12 levels in BC, an employment authorization concurrent with the student authorization should be granted under exemption D35.

2.6.6 Spouses of students – VE Code E07

Spouses of foreign students are allowed to accept employment in the general labour market without the need for validation. This exemption is intended for spouses who are not themselves full–time students.

a) Eligibility

Applicants must provide evidence that they are

i) the spouse of a holder of a student authorization who is attending a post–secondary institution on a full–time basis, or

ii) the spouse of a person who has a valid employment authorization to work at a job related to the course of study, after graduation (under Code E08 following).

Spouses of full–time students are eligible for open or open/restricted employment authorizations, depending on whether or not a medical examination has been passed. There is no need for an offer of employment before issuing an employment authorization.

b) Validity

Employment authorizations can be issued with a validity date to coincide with the spouse's student authorization, including the period of time the spouse is entitled to work after graduation (under Code E08 following).

2.6.7 Employment following graduation – VE Code E08

Students may accept education–related employment for a maximum period of one year following successful completion of their studies, without the need for validation.

a) Eligibility

The following criteria apply:

i) the student must have graduated from a program at a post–secondary institution described in A10(a);

ii) the student must still be in possession of a valid student authorization;

iii) the employment must be consistent with the recently completed course of study; and

iv) the employment must commence within 60 days of issuance of marks;

v) the student must not have been formerly issued an employment authorization under this exemption following any other course of study.

b) Assessment

The policy of post–graduation employment was developed to benefit students in a meaningful way, by enabling them to acquire practical business skills in the Canadian context and undertake an activity consistent with their recently completed course of study.

In the majority of cases, the assessment of eligibility will be fairly straightforward. Where the student's eligibility is not clear to the officer, the test to be applied relates to the following:

i) does the employment require the level of training the student has achieved?

ii) is the employment of a type for which graduates at the same level of study would normally be recruited?

If the a relationship can be established and the answers weigh in favour of the client, officers should not hesitate to approve the request.

c) Validity

Employment under E08 is limited to a cumulative and concurrent period of one year in duration only. This is a one–time validation exemption which cannot be used again following the completion of any subsequent courses of study. Extensions beyond one year will require validation.

2.6.8 Scholarship students petitioned by a university – VE Code E30

This exemption applies to foreign students who are the subject of a petition by a Canadian university or college on the basis that the student was accepted by the institution on an academic or athletic scholarship and

whom, in the opinion of the institution and the Director of Immigration, it would be in the best interests of all concerned to permit to take employment arranged by the institution.

2.6.9 International student and young workers – Code VE35

There are a number of International Student and Young Worker Employment Programs which qualify under validation exemption These programs are usually based on reciprocity and exchanges with a number of countries. Authorizations can be issued for between 1 to 18 months, depending on the type of program.

The employment can be open or employer specific. When issuing an "open" employment authorization, an occupation restriction must be specified if the applicant has not passed an immigration medical. Once the applicant has completed the medical requirement, the term and condition can be removed.

Programs which qualify for this exemption and the various conditions and eligibility requirements which apply are outlined in the Table at APPENDIX B which is set out alphabetically by program, and APPENDIX C set out alphabetically by country.

2.7 Minor students

The regulations make no distinction between minor students and those who are of the age of majority. There are, however, issues related to minor students, particularly those who plan to enter Canada unaccompanied, which distinguish these applicants from those destined to institutions at the post–secondary level.

Education, health, community and social services and guardianship are matters of provincial jurisdiction. Following consultations with the provinces and territories, a cohesive approach to the processing of minor students has been developed. One common theme which emerged from the consultations is that the recruitment of foreign students, even at the primary and secondary levels, provides an important economic and cultural contribution to all provinces and territories. These benefits must be tempered, however, with a corresponding vigilance for the protection and well–being of the minor.

2.7.1 Guardianship/Custodianship

Legal guardianship is an expensive and lengthy procedure in most jurisdictions, and is likely to be granted only where the minor is an orphan or is a ward of the province/territory. For the purposes of a student authorization application, therefore, the term custodianship is more appropriate.

Under A19(1)(b, before they issue any document, visa officers must be satisfied that adequate arrangements are in place for the care and support of those who are unable to support themselves. The onus is on the applicant to satisfy the assessing officer that the terms of section 19(1)(b) are met.

To satisfy section 19(1)(b), all applicants must supply proof in the form of notarized declarations, one signed by the parent or legal guardian in the country of origin, as well as one signed by the custodian in Canada, stating that arrangements have been made for the custodian to act in place of a parent in times of emergency, as when immediate medical attention or intervention is required.

A broader notarized declaration may fulfil the section 19(1)(b) requirement in all cases. It would state that a Canadian citizen or permanent resident of at least 19 years of age is prepared to act in place of the parent. In the case of a child attending a boarding school, this declaration may be signed by the principal.

The visa officer may require the broader notarized declaration depending on the age of the child. A very young student, for example, would need someone to step into the shoes of the parent. A student near the age of majority might only need someone to act in place of the parent in the event of an emergency.

2.7.2 Health Insurance

Not all provinces and territories extend public health insurance benefits to foreign students. At the time of writing, only Saskatchewan and the Northwest Territories extend immediate coverage to foreign students. BC, Alberta and Nova Scotia do extend coverage, although after various waiting periods. No other jurisdiction extends benefits; therefore, applicants must be counselled as to the advisability of obtaining private insurance prior to arrival in Canada; for Québec–destined students, insurance may be a pre–condition to the issuance of the CAQ. Officers should note clearly on the file or in casenotes that the applicant was indeed provided with this information. Alternatively, application kits should include a notice to this effect. In the absence of a regulatory obligation, issuance of the authorization should not be held pending proof of private health insurance coverage.

2.7.3 Fees

Section R15.(1)(b)(i) clearly states only that the onus is on the applicant to demonstrate that he/she has sufficient financial resources available to him/her for payment of tuition fees once in Canada. Tuition fees vary between jurisdictions, and may be as high as $10,000. Student authorizations may not, therefore, be refused to minors who do not present proof of payment of tuition fees. A student authorization may not, however, be issued unless the applicant provides a letter of acceptance from the appropriate educational authorities. The onus, therefore, is on the provinces, and not on CIC officers, to ensure their school boards and divisions include provisions for the payment of fees as a pre–condition to the issuance of acceptance letters.

2.7.4 Bona Fides

As indicated above, there is no distinction in law between minor students and those who are of the age of majority. Bona fides of all students must be assessed on an individual basis; refusals of non–bona fide students may only withstand legal challenge when the refusal is based on the information related to the specific case before the officer. Therefore, while cultural context or historical migration patterns of a client group may be a contributing factor to the decision–making process, they alone are not valid, legally tenable grounds for refusal on bona fides. If officers wish to take into account outside information, particularly where that information leads to concerns/doubts about the applicant's bona fides, they must be able to show that the applicant was made aware of the information taken into account and/or the concerns and was given an opportunity to address those concerns. The onus, as always, remains on the applicant to satisfy the assessing officer that s/he is not an intending immigrant, that s/he is a bona fide visitor who will leave Canada following

the completion of his/her studies pursuant to section A9(1.2). Refusals on these grounds should cite this particular section of the Act and not those found under section A8(2).

It is recommended that a copy of the refusal letter be kept on file, whether as a hard copy or in an electronic format in the event of legal challenge.

2.7.5 Document Issuance

Officers are reminded that student authorizations for minors are not to be institution or jurisdiction specific, but that they are to be issued with a validity not in excess of 12 months. Exceptions to this are:

a) dependents of persons who have been issued long–term authorizations (visitor, student, worker). the validity must not exceed that of the document issued to the head of the family, and;

b) other deserving situations, such as students from the United States having no other option but to attend school in Canada and where there is no objection from the receiving schol district (i.e.: Americans from Hydar, Alaska attending school in Stewart, B.C.).

Inland offices are reminded that, when processing requests for extensions for students in the province of Québec, no new CAQ is required if the program of studies will be completed in a period of less than 12 months.

3. GENERAL ELIGIBILITY CRITERIA

3.1 Where clients apply

3.1.1 Legislative requirement to apply abroad

A10 requires that all visitors intending to study in Canada apply for and obtain a student authorization prior to arrival at a port of entry. The Act stipulates that:

A10 Except in such cases as are prescribed, every person, other than a Canadian citizen or a permanent resident who seeks to come into Canada for the purpose of

(a) attending any university or college authorized by statute or charter to confer degrees;

(b) taking any academic, professional or vocational training course at any university, college or other institution not described in paragraph (a);

shall make an application to a visa officer for and obtain authorization to come into Canada for that purpose.

3.1.2 Exemptions

For details of exemptions, please refer to APPENDIX D. As outlined, exemptions to the requirement to apply abroad fall into four broad categories:

15(2) persons who are not required to obtain a student authorization before arriving at a Port of Entry;

15(3) persons whose application can be processed at a Port of Entry;

16 persons who may apply from within Canada; and

14.2 14.3 persons exempt from the need for a student authorization. Detailed instructions on this category are contained in section 3.1.3.

3.1.3 Persons exempt from student authorizations

Special provisions apply to dependants of diplomats, visitors attending short–term language courses, and persons who intend to enrol in courses of studies that are not academic, professional or vocational in nature.

Pre–schoolers

Pre–school children who attend day–care centres, nursery schools and kindergarten classes below the Grade 1 level do not fall within the provisions of A10(b) and do not, therefore, require student authorizations.

a) Dependants of diplomats

All persons (except persons holding diplomatic, official, special or service passports from Turkey) coming to Canada on posting, including their families, will be in possession of diplomatic or official visas.

Entry is initially authorized for a period of six months. During this period, the passport is forwarded by the person's embassy or consulate to the Office of Protocol of the Department of Foreign Affairs and

International Trade (DFAIT). The Office of Protocol will issue a diplomatic (D), consular (C), official (J) or international (I) acceptance counterfoil to the person's passport indicating that the person is accredited to Canada and entitled to remain in Canada for the duration of status.

Dependants of diplomatic personnel or members of their staff who wish to attend courses and who possess the acceptance counterfoil obtained from the Office of Protocol do not require a student authorization.

Children under 19

Dependent children of diplomats, consular officers, representatives or officials who are under 19 years of age are considered to be members of the family forming part of the household will be issued acceptances. They do not require a student authorization.

Children over 19

Children over the age of 19 are only issued acceptances if they are registered as full–time students. After 25 years of age, dependants are no longer eligible to receive official acceptances, and must change their official status to regular immigration status. Children over 25 years of age who are full–time students may obtain visitor status with permission to study, if they qualify as dependent children under Immigration Regulations. They are exempt from having to obtain student authorizations.

For information

Questions related to diplomats, consular officers, representatives and officials of foreign missions in Canada should be addressed through National Headquarters to the Office of Protocol, Foreign Affairs, Ottawa, Ontario K1A 0G2. In cases of urgency, contact the Immigration Advisor at the Office of Protocol at (613) 995–5957.

b) Visitors attending short–term language courses

Visitors may enter Canada or remain in Canada without a student authorization to attend a French or English language training course of three months' duration or less. The three–month criterion was established after negotiations with the provinces who have responsibility for education.

There have been instances where persons coming on short–term language courses are registered in a course for periods longer than three months, but have been seeking to enter Canada as visitors under this exemption. The three–month timeframe must be adhered to and anyone seeking to follow a course of longer duration requires a student authorization.

To be eligible under this provision, the course duration does not have to be consecutive, but can be an accumulation of time adding up to three months.

Visitors wishing to continue language training beyond the three–month period or those wishing to enrol in other educational programs must leave Canada and obtain student authorizations in the normal manner.

c) Persons who intend to enrol in courses of studies that are not academic, professional or vocational

The Act does not require student authorizations for persons who intend to enrol in courses of studies that are not academic, professional or vocational in nature.

Academic, professional or vocational training does not include short–term, self–improvement or general–interest courses. Usually, these courses do not have a formal curriculum or a formal examination and do not grant official credit towards a degree or diploma. Although some of the skills learned in these courses might prove useful in the workplace, they are not primarily directed toward career training. Such courses may be offered, among others, by local school boards in continuing education or as a hobby, self–improvement or life–skills courses, and can range from flower arranging and cake decorating to auto mechanics, typing and language courses.

3.2 Letters of acceptance

3.2.1 Legislative requirement

For the exact legislative reference related to letters of acceptance, officers should refer to section 1.2 of this chapter, or to A10(a) and (b) and R15(1)(a).

Generally speaking, the regulations specify that every application for a student authorization shall be accompanied by a letter of acceptance or proof of registration from the educational institution which the student will be attending.

3.2.2 Exemptions

Dependents of holders of student and employment authorizations do not require letters of acceptance. [R15(1.01)].

Because of special sponsorship arrangements, it can be assumed that students sponsored by CIDA and DFAIT meet the requirements relating to acceptance, institution, course of study, and language.

3.2.3 Conditional letters of acceptance

There may be cases when students produce conditional letters of acceptance indicating that the student will be allowed to register at the institution. Visa officers are to treat conditional letters of acceptance as meeting the requirements of R15(1)(a), except where there is serious doubt that registration will be allowed.

Processing should not be delayed, and student authorizations should be issued without advance fulfilment of conditions. The onus is on the institution to specify clearly any condition which is important enough to warrant denial of registration should the condition not be fulfilled. Similarly, the onus is on the student to satisfy the institution in advance that any such important condition has been fulfilled.

Long–term validity

Students with conditional letters of acceptance should also benefit from long–term authorizations, unless there are grave concerns that the conditions cannot be met.

3.2.4 Standard Letters of Acceptance

Students can establish acceptance to a course of study by showing officers a letter of acceptance from the educational institution which they will be attending.

In order to facilitate the processing of applications for student authorizations and reduce delays due to incomplete information, CIC in cooperation with the Advisory Committee on International Students and Immigration, has devised a list of standard items which should be included in all letters of acceptance issued to potential international students.

3.2.5 List of items required in Letters of Acceptance

The following list of items should be included in all letters of acceptance from educational institutions, submitted by students at the time of their application:

- Full name, date of and mailing address of student.
- The course of study for which the student has been accepted.
- The estimated duration or date of completion of the course.
- Date on which the selected course of study begins.
- The last date on which a student may register for a selected course.
- The academic year of study which the student will be entering.
- Whether the course of study is full–time or part–time.
- The tuition fee.
- Any conditions related to the acceptance or registration, such as academic prerequisites, completion of a previous degree, proof of language competence, etc...
- Clear identification of the educational institution, normally confirmed through the letterhead.
- Where applicable, licensing information for private institutions, normally confirmed through letterhead.

3.2.6 Criteria related to course of study

The following criteria apply to all institutions except privately funded institutions in British Columbia which are governed by provincial statute under the Post–Private Secondary Education Act, administered by the Post–Private Secondary Education Commission (PPSEC). In B.C., unlike other provinces, a privately–funded institution registered under PPSEC meets the criteria of R17 regardless of specifications outlined below.

The letter of acceptance from the educational institution must show that the applicant will be pursuing a course of studies which meets at least one of the following criteria, as specified in R17(1)(a) to (e):

a) The course of study is at least six months in duration and involves at least 24 hours of instruction per week. The following factors may be included in calculating the 24 hours per week: laboratory time, library time, and outside work or other assignments that can be considered an integral part of a course of study and study time.

b) The course of study is given by a chartered college or university or by any other publicly funded institution.

c) The course of study is recommended by any department or agency of the government of Canada, or by a department or agency of the government of any province. Federal and provincial government departments or agencies can accept foreign students for specific courses that they may offer from time to time, such as the RCM Police course.

d) The course of study is incidental and secondary to the applicant's main purpose for being in Canada. Accompanying spouses may fall into this category. Such courses can include any full–time or part–time course given at any recognized institution, so long as taking the course will not become the primary reason for the person being in Canada. For example, if a person said that he or she was coming to Canada for four months during which time that person may take a two or three–week summer course, officers should consider the course as incidental to the person's prime purpose. If the person were to say that he or she was coming for four months and would be seeking to take a full–time course for that period, officers should not consider the course incidental to the applicant's prime purpose.

e) The course of study involves upgrading of skills or language training and is given at an institution that operates under a provincial or federal licence. Upgrading of skills is intended to apply to those persons who already have a basic ability which they want to develop further, or those who might require some language training either for itself or to enable the student to meet language requirements to enter university or college.

3.2.7 General application of criteria related to course of study

CIC expects that the provisions of a) and b) above will be the standards governing studies in most cases.

There will be cases, such as those in c), d) and e), where the time and institutional standards will not apply, but where officers should consider the person to be a student for the purposes of the authorization.

Courses taken under b), c), d) or e) may be part–time and may be less than six months' duration.

3.2.8 When applicants have to meet conditions of enrolment

If an educational institution issues a letter of acceptance subject to certain conditions such as payment of fees, the achievement of certain academic standards or completion of a previous degree, the institution considers that the applicant will fulfil the conditions of enrolment. It is not the responsibility of the visa or immigration officer to ensure that the applicant complies before issuing an authorization. The onus is on the institution. Processing should proceed and authorizations should be issued without advance fulfilment of conditions.

3.2.9 Applicant's knowledge of English or French

There may be cases where officers feel that a student's lack of English or French will make it extremely difficult for that student to follow the desired course of studies.

Nevertheless, since chartered universities or colleges either require minimum pass marks on a language test before offering admission, or have structures in place to upgrade language skills, the apparent lack of language ability in students destined to one of these institutions should not be a concern. If officers have serious doubts, and where the educational institution has issued a letter of acceptance, officers may contact the geographic desk at NHQ.

Officers at NHQ will verify the status of the case with the institution and inform the visa office accordingly. If the institution maintains the acceptance despite the officer's observations, NHQ will advise the visa office to proceed with the application.

In rare cases where it seems clear that the lack of English or French will make it extremely difficult for a student to pursue a desired course of study, officers may want to discourage that student from pursuing an application for a student authorization. Otherwise, officers should proceed as directed above.

3.2.10 When Letters of Acceptance are incomplete

Through the Advisory Committee on International Students and Immigration, CIC has made educational institutions aware that information on all standard items listed above will greatly facilitate the processing of student authorizations. However, there may be instances where letters of acceptance will be incomplete, or where some institutions may be unable to provide the requested information.

In such instances, officers may need to seek additional information from their geographic desk at NHQ who will contact the educational institution directly, in order to satisfy themselves that all criteria are met before an authorization is issued. NHQ will then advise the visa office accordingly.

3.2.11 Letters of Acceptance from prescribed institutions

Letters of acceptance to the institutions listed in Schedule III R17(2) are not acceptable for student admission. For the list of prescribed institutions, refer to section 1.2.9. For an explanation of the rationale behind prescribing institutions, refer to section 2.4.

3.3 Financial sufficiency

3.3.1 Legislative requirement

For the exact legislative reference related to financial sufficiency, officers should refer to section 1.2 of this chapter, or to R15(1)(b).

In general, officers need to satisfy themselves that applicants have sufficient financial resources to pay their tuition fees, transportation costs to and from Canada as well as living expenses for themselves and any dependents who may be accompanying them, without the need to engage in employment.

3.3.2 Exemptions

Refugee claimants and their dependants applying for a student authorization in Canada are exempted from these financial requirements. [R15(1.1).]

Because of special sponsorship and funding arrangements, it can be assumed that students sponsored by CIDA and DFAIT meet the financial requirements relating to single students. Students with spouse and dependants must have additional funds in accordance with the formula outlined below.

3.3.3 Basis of formula for determining financial sufficiency

In order to facilitate the assessment of financial sufficiency, and ensure more consistency in the processing of applications, CIC has developed a special formula, in consultation with DFAIT, visa offices, and international student interest groups which have an interest in facilitating the recruitment of students from abroad.

The foundation of this formula is the use of a base amount for students which covers all costs except tuition, plus an additional base amount for spouses and another for dependants, as applicable. The base amount for students satisfies all requirements related to maintenance and transportation, including the cost of books, equipment and supplies. The economic framework or size of the community where the student is destined is not a consideration, and the amount will allow for a very basic lifestyle only. The base figure will be reviewed annually and adjusted as required.

3.3.4 Formula for all provinces except Québec

The following formula applies to all applications except those from students destined to Quebec. The different formula for Quebec students is outlined below.

STUDENT BASE	$10,000 for twelve–month period, plus the cost of tuition, pro rated at $833 per month.
SPOUSAL BASE	$4,000 for twelve–month period for spouse or adult companion, pro–rated at $333 per month.
DEPENDANT BASE	$3,000 for twelve–month period per dependant child of any age, pro–rated at $255 per month.

3.3.5 Formula for province of Québec

Students destined to the Province of Quebec will continue to be assessed according to criteria developed by MRCIQ.

If the application is being reviewed by an officer at a mission where there are no local Quebec representatives, officers will assess financial sufficiency according to the following criteria.

STUDENT BASE	$9,600 for twelve–month period, plus the cost of tuition, pro–rated at $800 per month.
FIRST DEPENDANT	60% of student base or $5,740 for twelve–month period, pro–rated at $478 per month.
SUBSEQUENT DEPENDANTS	40% of student base or $3,840 for twelve–month period, pro–rated at $320 per month.

3.3.6 Assessment for first year of studies only

Officers are reminded that students are required to demonstrate financial sufficiency for the first year of studies only, regardless of the duration of the course of studies in which the student in enroled. In other words, a single student entering a four–year degree program with an annual tuition

fee of $5,000 must demonstrate funds of $15,000 to satisfy financial sufficiency requirements, and not the full $60,000 which would be required for four years.

3.3.7 Other sources of support

In assessing the adequacy of a student's financial resources, officers may take into consideration such sources of funds derived through scholarships, fellowships, assistantships and the like, as well as financial support or support in kind which may be available from relatives in Canada. Funding from other sources, either in Canada or abroad, may also be considered; however, these must be examined closely for reliability. Officers will not consider as reliable source the student's possible earnings from part–time or summer employment. Foreign students in Canada, as visitors, are ineligible for benefits under the Canada Student Loan Act.

3.3.8 Foreign exchange controls

Foreign exchange control measures are in effect in many countries. Where students are dependent on such controlled funds, they should be required to present one of the following:

a) a letter from a Canadian financial institution stating that funds necessary for the entire upcoming academic year are on deposit in the applicant's name;

b) a bank draft in convertible currency for an amount equal to the funds required for the upcoming academic year and made payable jointly to the educational institution and the applicant; or

c) written assurance from the applicant's bank that sufficient funds are on deposit, and from the foreign exchange control authorities that the applicant will be permitted to export a sum adequate for maintenance costs in Canada.

3.3.9 Availability of Funds

Students can establish that they have adequate funds by providing documentary evidence such as:

a) a letter from a Canadian financial institution stating that funds necessary for the first year of the course of study are on deposit with the institution in the applicant's name;

b) a bank draft in convertible currency for an amount equal to the funds required for the upcoming academic year, and made payable jointly to the educational institution and the applicant;

c) written assurance from a bank that applicants have sufficient funds, and, where applicable, from the foreign exchange control authorities that they will be permitted to export a sum adequate for their maintenance in Canada;

d) written statements from support persons in Canada stating that they have the means and agree to support the student;

e) evidence of acceptance in a Canadian government funded program such as CIDA or DFAIT.

3.3.10 Validity period, where no doubt exists on financial sufficiency beyond one year

Where no doubt exists on a student's financial sufficiency beyond the first year of study, and where the full duration of the course exceeds one year, officers will issue the student authorization for the full period of the

course of study, provided all other requirements are met. If applicable, a multiple entry visitor visa should be issued for the same duration as the student authorization.

3.3.11 Validity period, where doubt exists on financial sufficiency beyond one year

While adequate funding for the full duration of the intended program need not be demonstrated at the time of application, officers should also have no reasonable basis to doubt that such funding will be available. Any such doubt would not be grounds for refusal, but rather for limiting the student authorization to a period of one year.

3.3.12 Counselling students on Canadian cost of living

When counselling students on financial requirements, or when distributing counselling material to foreign students, officers should ensure that applicants have a clear understanding that the amount required by CIC for their maintenance and that of their dependants are minimum amounts and will provide for a very basic lifestyle only. This is especially true if the student must live in one of Canada's major cities. Students should give careful consideration to the advice provided by their educational institution on the cost of living in their area, and where possible, ensure that additional funds will be available to meet the level of financial resources suggested by the institution.

3.4 Medical requirements and health insurance

3.4.1 Expediting medicals

Medical requirements for students are the subject of much discussion and the source of some discontent among international student interest groups, as they are seen by CIC stakeholders as the main impediment to speedy processing of student authorizations.

Removal of medical requirements is not an option. However, CIC is reviewing certain aspects, such as those elements which the medical exam should encompass, and whether local doctors should be allowed to perform medicals. Discussions are ongoing with the Advisory Committee on International Students and Immigration on this issue and officers will be kept informed of any streamlining or operational modifications.

On an operational basis, as a way of expediting applications, students should be encouraged to have medicals completed in concert with their application to Canadian educational institutions. For its part, the CIC is encouraging educational institutions to inform students of immigration requirements and the need to do medicals early in the process. Canadian Education Centres abroad should also be encouraged to counsel students accordingly.

3.4.2 Medical requirements

Foreign students must meet the same medical requirements as those which apply to all visitors to Canada.

a) Six–month rule

Generally speaking, students who intend to be in Canada for more than 6 months, and have resided in a designated country for more than 6 months within the year preceding their arrival in Canada are required to undergo a medical examination. The determining factor is

not citizenship, but whether the person resided in a designated country in the preceding 6 months. APPENDIX E lists countries where medicals are **not** required. For the complete list of Medical Requirements and Details by Country, consult IR 3.

b) Designated occupation

Students from non–designated countries must undergo a medical examination if they are to be employed in

- child care,
- primary or secondary teaching, and
- health services field occupations.

Students from designated countries must undergo a medical examination if they are to be employed in

- agricultural,
- child care,
- primary or secondary teaching, and
- health services fields.

3.4.3 Provincial Health insurance

Applicants should be strongly counselled that health insurance is a critical necessity, and that they should arrange for health insurance coverage in advance of arrival in Canada.

The Province of Québec will not issue a CAQ to students unless they show acceptable coverage. To be eligible for health insurance coverage under any of the other provincial or territorial health insurance plans, one must establish residence in a province and register to ensure coverage.

Where applicants are not eligible for provincial health insurance, or where they are eligible after fulfilling certain residency requirements, they should be counselled to register for private plans during their stay in Canada, or until such time as they can qualify for provincial coverage.

Proof of coverage for a period of one year should be sufficient, but applicants should be counselled that they will need to extend their coverage for the duration of their stay in Canada.

Information can be obtained directly through most Universities and schools, or directly from private insurance companies.

Eligibility of provincial health insurance coverage for students and their dependants varies. Consult the chart in APPENDIX F for details.

3.5 Student bona fides

3.5.1 Factors underlying assessment of bona fides

There are two major factors underlying the assessment of student bona fides.

First, foreign students have not represented a control or enforcement problem for Canada. Second, there is a new and growing realization in Canada that foreign students yield significant benefits for our economy.

In administering its foreign student program, CIC must support the policies of other federal government departments, provinces and educational institutions who are anxious to capitalize on the potential which foreign academic talent represents.

3.5.2 Assessment criteria

In establishing whether a foreign student is a bona fide visitor, officers should be guided by the knowledge that foreign students educated in Canada provide needed links for trade and investment, and that they are an excellent source of future skilled immigrants. It is not uncommon for highly qualified students, particularly those at the graduate level, to work for a year after completing their course of studies and apply for permanent residence status through visa offices in the USA. CIC views this development as a positive outcome.

Foreign students have the burden of proving to the satisfaction of officers that they are bona fide visitors. However, in these cases, the general question of bona fides is not so much whether the applicant is a prospective immigrant, but whether the applicant is a prospective illegal immigrant.

3.6 Terms and conditions

3.6.1 Legislative reference

Visa officers may recommend the imposition of terms and conditions, and immigration officers may impose terms and conditions when issuing student authorizations, in accordance with R23. This regulation lists the terms and conditions which may be imposed on all visitors.

3.6.2 Exemption

Terms and conditions cannot be imposed on a student authorization issued to a person who is on a Minister's Permit, or to a refugee claimant who does not have valid visitor status.

3.6.3 Terms and Conditions

A. Required of all foreign students

1. Must be in attendance at an approved type of institution.

This conditions applies to all students other than those attending primary or secondary schools.

All documents should specify the type of educational institution which the student will be attending, such as university or community college, without specifying the specific institution or the program in which the student is enrolled.

For instance, if students wish to change from an engineering course at one university to a medical course at another university, they can do so without the need to obtain a new authorization since they are attending the same type of institution. However, students are required to obtain a new authorization if they wish to change from one type of educational institution to another, for example, from a university to a community college.

B. To be imposed at the discretion of officers

2. Prohibited from engaging in employment in Canada.

This condition prohibiting students from engaging in employment in Canada cannot be applied if officers are issuing an employment authorization along with the student authorization or if the student is eligible to work on the campus of the institution at which s/he is registered on a full–time basis pursuant to R19(1)(x).

3. Attendance only at a university, college or other institution which officers specify by name.

This condition should be reserved for those few cases where officers believe that this type of control is required. No terms and condition referring to attendance at a specific, named educational institution should appear on student authorizations issued to primary or secondary school students.

4. Prohibited from working in certain occupations unless medical requirements have been met.

The following term and condition should be imposed on students who have not undergone a medical examination:

- Students from a non–designated country, not authorized to work in
  - child care,
  - primary or secondary teaching, and
  - health services field occupations.
- Students from a designated country, not authorized to work in
  - agricultural,
  - child care,
  - primary or secondary teaching, and
  - health services fields.

5. Must report for medical examination,surveillance or treatment

If warranted by the student's medical condition, terms and conditions must be imposed as follows:

- the time and place where the student must report for medical examination, surveillance or treatment or for any other purpose;
- the times and places at which the student must furnish evidence of compliance with the terms and conditions thus imposed.

6. Must leave Canada by a specific date.

7. Travel in Canada is restricted.

3.7 Validity periods

3.7.1 Policy intent

CIC is committed to facilitating the recruitment of bona fide students, and to rationalizing the process for them to enter and remain in Canada. Once officers have determined that a student is bona fide and meets the requirements, the operational goal is to eliminate or at least minimize further transactions with the student. This objective remains paramount in the processing of cases, and can be accomplished through several procedures outlined in this chapter, including the issuance of long–term authorizations as specified in this chapter.

3.7.2 Post secondary

In general, the period of validity of student authorizations for students post–secondary students should correspond to the duration of their proposed course of studies in Canada, plus an additional three months. As outlined in sections 2.5.5 d) and 2.5.7 d), this policy does not apply to students sponsored by CIDA or DFAIT.

The determinant factor must be that the student is a bona fide visitor. This policy is meant to assist foreign students who will be studying in Canada at the post secondary level for several years.

The duration of the authorization can be the entire course of post secondary studies, for example, 2 or 3 years for a master's degree, even though the official acceptance letter from the university is only for one year at a time. An additional 3 months should be added to the student authorization to allow the student to prepare for his or her return home, or to arrange for post graduate employment under E08.

Visitor visa

If a visitor visa is issued in conjunction with the student authorization, the length of the visa should also correspond to the length of the student authorization.

Exceptions

Exceptions to this policy which warrant validity periods limited to one year would include:

a) where concerns exist about the student's financial means which are not strong enough to result in a refusal;

b) where concerns exist about the institution with regard to the school's academic or administrative practices;

c) where the length of a program of non academic studies is not clearly identified or appears exaggerated;

d) situations where there are concerns that the person may pose a threat to the well–being of the democracy of Canada. See IC 2, APPENDIX C for a list of statesman/special category countries where this applies, and IC 2, section 44. for the processing procedures applicable for these countries.

Officers may limit the student authorization if they have concerns about a student's financial means which are not sufficient to refuse the application. Limiting the duration of a student authorization should be the exception and should not be used as an excuse for not refusing an application. Officers should remember that it is more often more difficult to refuse an extension of a student authorization in Canada when students have begun their course of studies than to refuse the initial authorization overseas.

3.7.3 Primary and secondary students

Students at the primary and secondary levels should be issued authorizations on a year–by–year basis, except for dependants of persons who have been issued long–term authorizations, provided the period requested does not exceed that which has been given to the head of the family.

3.7.4 Students destined to Québec

In general, the Québec Government issues long–term CAQs to post secondary foreign students destined to Québec. For Québec students, the duration of the student authorization should coincide with the duration of the CAQ.

3.7.5 CIDA students

Students entering Canada under programs sponsored by CIDA should be issued student authorizations on a year to year basis.

3.7.6 DFAIT students

At visa offices, students sponsored under the Commonwealth Scholarship and Fellowship Plan will initially be issued student authorizations valid for one year. On renewal in Canada, the student authorization may be made valid for the tenure of the award.

Students under the Government of Canada Awards program are usually sponsored for one year. Their authorization should correspond to the duration of the award.

3.7.7 Statesman and special category country

Students from a statesman or special category country should have their authorization issued for one year, to be extended on a year–by–year basis once in Canada. See IC 2, APPENDIX C for a list of statesman/special category countries where this applies, and IC 2, section 44. for the processing procedures applicable for these countries.

3.7.8 Rotary Exchange Students

The Rotary International Youth Exchange Program enables students to attend high school for one year and sponsored events over the summer months after completion of academic year. See section 2.5.9.

Consequently, all student authorizations issued to Rotary International Youth Exchange Program participants must be valid until August 31 of the following year.

4. PROCESSING AN APPLICATION ABROAD

4.1 Requirement to apply abroad

A10 requires that all visitors intending to study in Canada apply for and obtain a student authorization prior to arrival at a port of entry.

Refer to section 3.1.1 for details.

4.2 Persons exempt from applying abroad

Exemptions fall into four categories

15(2)	persons not required to obtain an authorization before arriving at a Port of Entry;
15(3)	persons whose application can be processed at a Port of Entry;
16	persons who may apply from within Canada; and
14.2 14.3	persons exempt from the need for a student authorization.

Refer to APPENDIX D for details.

4.3 Documents required with application

The following documents must be provided with application:

- Application Form IMM 1294
- Cost–Recovery Fee
- Letter of Acceptance
- Proof of identity
- Proof of financial support
- CAQ for students destined to Québec

4.4 Reviewing the documentation

Officers should check to ensure that all documents are enclosed with the application and that these have been properly completed.

Québec bound students

Officers are not required to conduct a full assessment for students destined to Québec who are in possession of a valid CAQ. A visa officer may issue the student authorization after having ensured that the student meets the usual statutory requirements, and that financial resources meet Québec's standards outlined at section 3.3.5.

CIDA and DFAIT

Special processing arrangements for students sponsored by CIDA and DFAIT are outlined throughout these procedures. Officers should ensure that all applicable instructions at section 2.5 are followed carefully.

Refer to section 2.5 for details.

4.4.1 Form IMM 1294

Check to ensure that Application form IMM 1294 has been properly completed and signed by the applicant.

4.4.2 Cost Recovery Fee

Determine whether a cost–recovery fee is payable and that payment has been included with the application.

Refer to section 2.3.4 for details on exemptions.

The fee is $125 for a student authorization. Depending on local operating conditions, fees may be payable by cash, Canadian, American or local currency at the rate of exchange set by the Mission; Visa or MasterCard; certified cheque or money order in Canadian funds payable to the Receiver General for Canada.

Refer to section 2.3 for details.

4.4.3 Letter of Acceptance

Each application must be accompanied by a Letter of Acceptance from the educational institution which the student will be attending.

Exemption

Dependents of holders of student and employment authorizations are exempt from this requirement.

CIDA and DFAIT

Because of special sponsorship arrangements, it can be assumed that students sponsored by CIDA or DFAIT meet requirements related to acceptance, institution, course of study and language.

Conditional

Conditional letters of acceptance are acceptable, and students should benefit from long–term authorizations.

Refer to section 3.2.3 for details.

Using the following guidelines, check to ensure that the Letter of Acceptance is complete, and that the course of study meets legislative requirements.

STANDARD INFORMATION

The Letter of Acceptance should include the following basic information:

- The name, date of birth, mailing address of student;
- The course for which the student has been accepted;
- The estimated duration or date of completion of course;
- The date on which course begins;
- The last date on which student must register for course;
- The academic year which student will be entering;
- Whether course is full–time or part–time;
- The tuition fee;
- Any condition related to the acceptance;
- Clear identification of the educational institution;
- Licensing information for private institutions.

Refer to section 3.2 for details.

COURSE OF STUDY

Exemption:

The following criteria do not apply to privately–funded institutions administered by the Post–Private Secondary Education Commission in British Columbia, which are deemed by provincial statute to meet these requirements.

Requirements:

The Letter of Acceptance must show that the applicant will be pursuing a course of studies which meets at least one of the following regulatory requirements:

- is at least 6 months in duration and involves at least 24 hours of instruction per week; [17(1)(a)]
- is given by a chartered college or university, or by any other publicly funded institution; [17(1)(b)]
- is recommended by any department or agency of the Canadian or a provincial government; [17(1)(c)]
- is incidental and secondary to the applicant's main purpose for being in Canada; [17(1)(d)]
- involves upgrading of skills or language training and is given at a provincially or federally licensed institution [17(1)(e)].

Refer to section 3.2.6 and 3.2.7 for details.

4.4.4 Proof of funds

The applicant must present a financial document which officers must review to determine that adequate financial resources are available to support the applicant and any accompanying dependants for the first year of the course of study.

CIDA and DFAIT

Single students sponsored by CIDA or DFAIT are deemed to have sufficient funds by virtue of their sponsorship, but must demonstrate that they have sufficient additional funds to support any accompanying dependants.

Refer to sections 3.3.4 and 3.3.5 for assessment formula.

Refer to section 3.3 for details of financial requirements.

Applicants can establish that they have adequate funds by providing documentation such as:

- Letters or statements from the student's bank;
- Evidence of scholarships, fellowships, research assistantships;
- Written statements from supporting persons stating that they have the means and agree to support the student in Canada;
- Evidence of sponsorship in CIDA or DFAIT Programs.

4.4.5 Proof of identity

Applicants should provide proof of identity such as a passport, a travel document or official identity document, or photocopies of the following pages: identity pages, date and place of issue and validity date.

Officers must be satisfied that applicants have a valid passport upon presentation of their application – they are not required to have a passport valid for the entire duration of their course of studies.

Persons exempt from a passport requirement [R14(4)] should provide an acceptable personal identification such as citizenship document, national identification document birth certificate, etc.

4.4.6 Certificat d'acceptation du Québec

Students destined to an educational institution in Québec require a CAQ, unless they are

- chosen under a government funded program for developing countries as sponsored by CIDA;
- dependants of diplomats accredited to Canada;
- enrolled in a part–time course of less than 20 hours per week;
- enrolled in intensive French or English courses of at least 20 hours per check, for a maximum period of 12 weeks;
- in possession of a Certificat de sélection du Québec (CSQ) when a decision has been made by Canada Immigration to accept to process the application for permanent residence in Canada.

Students who have not finished their course at CAQ expiy

There may be cases where a CAQ has expired but students have not completed their course of study within the initially planned timeframe. In these cases, a new CAQ may not be required, provided studies are finished within twelve months of the CAQ's expiry date. During this period, a new student authorization may be issued without a CAQ, providing the student's program remains unchanged and time required for completion is less than one year. Otherwise, a new CAQ will be required.

Countries served by MRCIQ

A student who resides in a country where there is a Service d'immigration du Québec (SIQ) must apply to that office. The SIQ will review the application and verify that the student's financial resources are adequate. Once the application is approved, the SIQ issues the CAQ and advises the student to contact the visa office.

A visa officer's role is to ensure that the student is a bona fide visitor and all other statutory requirements are met.

Refer to list at section 2.1.6.

Countries not served by MRCIQ

A student who resides in a country where there is no SIQ must send the application to the appropriate MRCIQ regional office in Canada. Educational institutions usually provide the applicant with instructions on how to apply for a CAQ.

An MRCIQ regional office may send by fax or telex to the visa office responsible for processing the student authorization, details of a particular CAQ and an estimate of funds required by an applicant. Upon receipt, the visa office opens a miscellaneous file and awaits contact from the applicant.

A visa officer may issue the student authorization after having ensured that the student meets the usual statutory requirements, and that financial resources meet Québec's standards.

Refer to section 2.1 for details.

4.5 What to do if documents incomplete

If the documents are incomplete, and/or the processing fee is incorrect, processing of the application cannot be initiated until the deficiencies have been corrected.

Officers are to use their judgment in determining the most efficient method of addressing the difficulties. In some cases, a telephone call may best serve the purpose, in others, it may be necessary to return the application and documents to the client with a written request for the missing information.

In some circumstances, depending on the processing office, it may be necessary to have the client come to the office for an interview or to complete the documentation.

4.6 Assessing the application

Once the documentation has been reviewed, officers will need to determine the following elements:

- Is the applicant a bona fide visitor?
- Is the applicant a member of the inadmissible classes?
- Is the applicant from a special category country?
- Does the applicant require a medical examination?
- Does the applicant need a visitor visa?
- Does the applicant need an employment authorization?
- Does the officer have any doubt on the applicant's language ability?
- Does the applicant have health coverage?

4.6.1 Bona fide visitor

Applicants have the burden of proving to your satisfaction that they are bona fide visitors. However, in the case of foreign students, the general question of bona fides is not so much whether the applicant is a prospective immigrant, but whether the applicant is a prospective illegal immigrant.

Refer to section 3.5 for guidance.

4.6.2 Inadmissible class

Review the application form IMM 1294 to determine whether the applicant is described in any section of A19 referring to inadmissible classes.

4.6.3 Special category country

Review IC 2 to determine if the student is from a special category country.

4.6.4 Medicals

Determine whether the applicant must undergo a medical examination, as required by R21(4).

Six–month rule

Students who intend to be in Canada for more than 6 months, and have resided in a designated country for more than 6 months within the year preceding their arrival in Canada are required to undergo a medical examination.

Refer to APPENDIX E for non–designated countries.

Designated occupations

Students from non–designated countries must undergo a medical examination if they are to be employed in

- child care,
- primary or secondary teaching, and
- health services field occupations.

Students from designated countries must undergo a medical examination if they are to be employed in

- agricultural,
- child care,
- primary or secondary teaching, and
- health services fields.

Refer to section 3.4 for details.

4.6.5 Visitor visa

Review Schedule II of Immigration Regulations to determine whether the student requires a visitor visa.

4.6.6 Employment authorization

Refer to APPENDIX A for details.

On campus

Full–time students registered in a degree or diploma–granting course are allowed to work on the campus of the institution at which they are registered without the need for an employment authorization. Officers should include the following remark on the student authorization:

"May accept employment on the campus of the institution at which the holder is registered in full–time studies."

Validation exempt

The following students require an employment authorization, but are exempt from validation under the code indicated at right:

Spouses of students	EO7
Post graduation employment	E08
CIDA students	D30
Co–op education and employment integral to studies	D35
Destitute students	C05
Students petitioned by a university	E30
International Student and Young Worker programs	E35

Refer to section 2.5 for details on Student Employment.

Refer to APPENDIX B and APPENDIX C for E35 programs.

4.6.7 Applicant's knowledge of English or French

There may be cases where officers feel that a student's lack of English or French will make it extremely difficult for an applicant to follow the desired course of studies. This should generally not be a concern, as institutions require a pass mark on language tests before offering

admission, or have facilities for upgrading language skills. Nonetheless, where officers have serious doubts, they should communicate with their geographic desk at NHQ.

Refer to section 3.2.9 for guidance.

4.6.8 Health coverage

Applicants should be counselled on the necessity to obtain health insurance. Different provinces have different requirements with respect to eligibility for provincial coverage.

Refer to section 3.4.3 and APPENDIX F for details.

4.7 Prescribed institutions

Officers must confirm that students are not destined to an institution prescribed in Schedule III of the *Immigration Regulations*.

Refer to section 2.4.1 for details.

4.8 Where concerns exist about institutions

There may be cases when students present a Letter of Acceptance from an institution where concerns exists about its academic or administrative practices. If officers have information about such schools where there is evidence that students never attend, attend infrequently or work illegally, they should pass this information to the CIC Regional office where the institution is located, or to the CPC–Vegreville, or to NHQ/SSE.

4.9 Interviews

In certain circumstances, it may be necessary to interview the applicant. Applicants should not be scheduled for interviews for the sole purpose of obtaining straightforward information. Issues which may warrant the need for an interview would include:

a) questions or doubts concerning applicants' reasons for wishing to come to Canada, the arrangements made for their care and support, and their ability or willingness to leave Canada; or

b) circumstances when the officer needs more information before issuing a refusal.

This is not an exhaustive list. Other exceptional circumstances may warrant an interview.

4.10 Negative decision

If the applicant is found ineligible, and the application is refused, the officer must advise the client of the decision and of the reasons for the refusal in writing.

CIDA Student

When a CIDA student is found inadmissible, the visa officer will report the case to the local CIDA representative or to the CIDA NHQ Canadian Partnership Branch representative listed at section 2.5.5 b).

DFAIT Student

When a DFAIT student is found inadmissible, the visa officer will report the case to the International Council for Canadian Studies, as listed at section 2.5.7 b).

4.11 Issuing the authorization

Once the applicant has been found to meet all eligibility criteria and requirements and a student authorization is to be issued, officers must:

- decide on the validity period;

- decide whether to recommend terms and conditions;
- issue a student authorization or, if the student is processed at a CAIPS office, issue a letter of introduction;
- issue a visitor visa, if required;
- issue an employment authorization, if required.

4.11.1 Validity periods

The following are general guidelines which apply:

Post secondary

Issue long–term authorization based on the length of time the student will require to complete the current course of study, with an additional three months to allow the student to prepare to return home or to arrange for post–graduate employment under E–08. Long–term authorizations apply regardless of the fact that the official acceptance letter from the university may only be valid for one year at a time.

Exceptions to this policy which warrant one–year validity periods include situations where concerns exist about the student's financial means which are not strong enough to result in a refusal, or situations where concerns exist about the institution's academic or administrative practices.

Primary and Secondary

Issue authorizations on a year–to–year basis unless they are dependants of persons with long–term authorizations, provided the period requested does not exceed that which has been given to the head of the family.

Québec

Authorizations should correspond to the validity of the CAQ.

CIDA

Issue yearly authorizations.

DFAIT

Issue authorization for an initial one–year period, with renewal valid for the tenure of the award.

Statesman and special category country

Issue a one–year authorization with yearly extensions. List of countries included in IC 2, APPENDIX F, and processing procedures outlined in IC 2, section 44.

Refer to section 3.7 for details.

4.11.2 Terms and conditions

Terms and Conditions are contained in FOSS.

Required for all students attending educational institutions, other than primary and secondary schools:

attend an approved **type** of institution, without specifying which institution or program.

May be recommended at the discretion of the visa officer:

a) prohibited against engaging in employment;

b) attend a university, college or other institution that you specify by name; this does not apply to primary or secondary students;

c) leave Canada by a specific date;

d) prohibit from engaging in employment unless medical requirements have been met;

e) report for medical surveillance, examination or treatment.

Refer to section 3.6 for details.

4.11.3 Issuing the student authorization

Where the visa office is supported by CAIPS, officers should enter into CAIPS the data required to enable Port of Entry officers to produce the student authorization, and issue the letter of introduction to the applicant, as outlined at section 4.11.

Post secondary

If visa officers restrict the validity period of the student authorization to less than the full course of studies for post secondary students, they should note the reason in the "Remarks" box. If this is not done, port of entry officers will amend the authorization to reflect the full period of the course of study.

Québec Student

In the case of students destined to Québec, visa officers are asked to inscribe the number and expiry date of the CAQ in CAIPS under the "Remarks" box on the student authorization in order for the information to be transmitted in FOSS.

CIDA Student

CIDA students will be identified with code 599 on the student authorization.

DFAIT Student

DFAIT students sponsored under the Commonwealth Scholarship and Fellowship Plan will be identified by Code 506 on the student authorization. No special notation is required for Government of Canada Award students.

Non–CAIPS office

If the visa office is not supported by CAIPS, officers will have to complete Student Authorization Form IMM 1208. Instructions are contained in the ID and IH Manuals.

4.11.4 Issuing a Visitor Visa

If the applicant is not from a country described in Schedule II of Immigration Regulations, the visa officer is required to issue a visitor visa. Visas should be issued for multiple entries valid for same period as student authorization. Instructions are contained in OP 9.

CIDA

Where a visitor visa is issued to a CIDA student, the notation "CIDA Student" must be written underneath the visa.

DFAIT

Where a visitor visa is issued to a student sponsored by the Commonwealth Scholarship and Fellowship Plan, the notation "CSFP Student" will be written underneath the visa.

4.11.5 Issuing an employment authorization

If after reviewing the requirements at section 4.6.6 officers determine that an employment authorization is required, they will need to issue the appropriate document to the applicant. Instructions on the issuance of Employment Authorizations are contained in IS 15.

4.12 Introduction letter provided by CAIPS offices

Where an applicant is processed at a CAIPS office, visa officers provide clients with a letter of introduction instead of issuing the student authorization. Students must present this letter at the Port of Entry where officials will issue the authorization. In these cases, the following specific information must be included in the Letter of Introduction issued to the client:

- *Your application to study in Canada has been approved. You may now travel to Canada. You must have a valid passport or travel document.*
- In some circumstances, it may be appropriate to provide the date by which the student must enter Canada. If so, officers should add:

  You must enter Canada no later than.... Failure to do so will invalidate this approval.
- *Please show this letter to the Canada Customs officer upon arrival in Canada. She or he will direct you to a Canada Immigration officer. This second officer will ensure that you meet the requirements for admission to Canada and issue your student authorization.*
- The following disclaimer must be clearly indicated at the bottom of the letter:

  This letter is not valid for travel and is not an authorization allowing you to remain in Canada.
- The document number generated by CAIPS – beginning with F – must be printed at the top right–hand corner of the letter.

5. PROCESSING AN APPLICATION AT A PORT OF ENTRY

5.1 Applicants eligible to apply at POE

Refer to APPENDIX D for detailed information on exemptions which apply to the general rule to apply abroad. In order to determine a person's eligibility to apply at a port of entry, officers will be particularly concerned with references to

- persons who are not required to have an authorization before arriving at a port of entry, [15(2)], and
- persons whose application may be processed at a port of entry [15(3)].

5.2 Persons exempt from Student authorizations

Special provisions apply to dependants of diplomats, visitors attending short–term language courses, and persons who intend to enrol in courses of studies that are not academic, professional or vocational in nature. Special provisions are outlined below.

Pre–schoolers

Pre–school children who attend day–care centres, nursery schools or kindergarten below the Grade 1 level do not fall within the provisions of A10(b) and do not, therefore, require student authorizations.

5.2.1 Dependants of diplomats

All persons (except persons holding diplomatic, official, special or service passports from Turkey) coming to Canada on posting, including their families, will be in possession of diplomatic or official visas.

Examining officers should simply stamp their passports, thereby authorizing entry for a period of six months. During this period, the passport will be forwarded by the person's embassy or consulate to the Office of Protocol of the Department of Foreign Affairs and International Trade (DFAIT). The Office of Protocol will issue a diplomatic (D), consular (C), official (J) or international (I) acceptance counterfoil to the person's passport indicating that the person is accredited to Canada and entitled to remain in Canada for the duration of status.

Dependants of diplomatic personnel or members of their staff who wish to attend courses and who possess the acceptance counterfoil obtained from the Office of Protocol do not require a student authorization.

Child under 19

Dependent children of diplomats, consular officers, representatives or officials who are under 19 years of age who are considered to be members of the family forming part of the household will be issued acceptances. They do not require a student authorization.

Child over 19

Children over the age of 19 are only issued acceptances if they are registered as full–time students. After 25 years of age, dependants are no longer eligible to receive official acceptances, and must change their official status to regular immigration status. Children over 25 years of age

who are full–time students may obtain visitor status with permission to study, if they qualify as dependent children under Immigration Regulations. They are exempt from having to obtain a student authorization.

On the first return to Canada of a representative or dependant whose passport bears a foreign representative acceptance counterfoil, the examining officers should stamp the passport and annotate it "for duration of status."

For information

Questions related to diplomats, consular officers, representatives and officials of foreign missions in Canada should be addressed through National Headquarters to the Office of Protocol, Foreign Affairs, Ottawa, Ontario K1A 0G2. In cases of urgency, contact the Immigration Advisor at the Office of Protocol at (613) 995–5957.

5.2.2 Visitors attending short–term language courses

Visitors may enter Canada or remain in Canada without a student authorization to attend a French or English language training course of three months' duration or less. The course duration does not have to be consecutive, but can be an accumulation of time adding up to three months.

This three–month period must be strictly enforced. Visitors wishing to continue language training beyond the three–month period or those wishing to enrol in other educational programs must leave Canada and obtain student authorizations in the normal manner.

Refer to section 3.1.3 b) for details.

5.2.3 Persons who intend to enrol in courses not academic, professional or vocational in nature

The Act does not require student authorizations for persons who intend to enrol in courses of studies that are not academic, professional or vocational in nature.

Refer to section 3.1.3 c) for definition.

5.3 Reviewing the documentation

Once you have ascertained that the person is eligible to apply at a Port of Entry, and requires a student authorization to study in Canada, you must review the documents to ensure that they are valid and properly completed.

Québec bound students

For students destined to Québec who are in possession of a valid CAQ, officers are not required to conduct a full assessment. A student authorization may be issued after having ensured that the student meets the usual statutory requirements, and that financial resources meet Québec's standards as outlined at section 3.3.5.

Students who are not in possession of a valid CAQ should be issued a three–month permit during which time they must obtain their CAQ from the Regional office of the Ministère des Relations avec Citoyens et de

l'Immigration du Québec (MRCIQ) that serves the educational institution which the students will be attending. Once a CAQ is issued, these students must convert their status accordingly.

CIDA and DFAIT

Special processing arrangements are in place for students sponsored by CIDA and DFAIT. Officers should ensure that all applicable instructions outlined at section 2.5 are followed carefully.

Refer to section 2.5 for details.

Documents required

Each application for a student authorization must be accompanied by the following documentation:

- A Letter of acceptance from the educational institution
- Proof of funds
- Proof of identity
- A CAQ for students destined to Québec

Officers should review this documentation according to the following general guidelines:

5.3.1 Letter of Acceptance

Each application must be accompanied by a Letter of Acceptance from the educational institution which the student will be attending.

Exemption

Dependents of holders of student and employment authorizations are exempt from this requirement.

CIDA and DFAIT

Because of special sponsorship arrangements, it can be assumed that students sponsored by CIDA or DFAIT meet requirements related to acceptance, institution, course of study and language.

Conditional

Conditional Letters of Acceptance are admissible and students should benefit from long–term authorizations.

Refer to section 3.2.3 for details.

Using the following guidelines, you should check to ensure that the Letter of Acceptance is complete, and that the course of study meets legislative requirements.

Refer to section 3.2.3 for details

Standard information

The Letter of Acceptance should include the following basic information:

- The name, date of birth, mailing address of student;
- The course for which the student has been accepted;
- The estimated duration or date of completion of course;
- The date on which course begins;
- The last date on which student must register for course;
- The academic year which student will be entering;
- Whether course is full–time or part–time;

- The tuition fee;
- Any condition related to the acceptance;
- Clear identification of the educational institution;
- Licensing information for private institutions.

Refer to section 3.2 for details.

Course of study

Exemption:

The following criteria do not apply to privately–funded institutions administered by the Post–Private Secondary Education Commission in British Columbia, which are deemed by provincial statute to meet these requirements.

Requirements:

The Letter of Acceptance must show that the applicant will be pursuing a course of studies which meets at least one of the following regulatory requirements:

- Is at least 6 months in duration and involves at least 24 hours of instruction per week; [17(1)(a)]
- is given by a chartered college or university, or by any other publicly funded institution; [17(1)(b)]
- is recommended by any department or agency of the Canadian or a provincial government; [17(1)(c)]
- is incidental and secondary to the applicant's main purpose for being in Canada; [17(1)(d)]
- involves upgrading of skills or language training and is given at a provincially or federally licensed institution [17(1)(e)].

Refer to sections 3.2.6 and 3.2.7 for details.

5.3.2 Proof of funds

The applicant must present a financial document which officers must review to determine that adequate financial resources are available to support the applicant and any accompanying dependants for the first year of the course of study.

CIDA and DFAIT

Single students sponsored by CIDA or DFAIT are deemed to have sufficient funds by virtue of their sponsorship, but must demonstrate that they have sufficient additional funds to support any accompanying dependants.

Refer to sections 3.3.4 and 3.3.5 for assessment formula

Applicants can establish that they have adequate funds by providing documentation such as:

- Letters or statements from the student's bank;
- Evidence of scholarships, fellowships, research assistantships;
- Written statements from support persons stating that they have the means and agree to support the student;
- Acceptance in CIDA or DFAIT sponsored programs.

Refer to section 3.3 for details of financial requirements.

5.3.3 Proof of identity

The client should provide proof of identity by showing officers a passport, a travel document or official identity document, or photocopies of the following pages: identity pages, date and place of issue and validity date.

Persons exempt from a passport requirement [R14(4)] should provide an acceptable personal identification such as citizenship document, national identity document, birth certificate, etc.

5.3.4 Certificat d'acceptation

Students destined to an educational institution in Québec du Québec require a CAQ, unless they are

- chosen under a government funded program for developing countries as sponsored by CIDA;
- dependants of diplomats accredited to Canada;
- enrolled in a part–time course of less than 20 hours per week; or
- enrolled in intensive French or English courses of at least 20 hours per week, for a maximum period of 12 weeks;
- in possession of a Certificat de sélection du Québec (CSQ) when a decision has been made by Canada Immigration to accept to process the application for permanent residence in Canada.

Students who have not finished their course at CAQ expiry

There may be cases where students have not completed their course of study within the initially planned timeframe. In these cases, a new CAQ may not be required, provided studies are finished within twelve months of the CAQ's expiry date. During this period, a new student authorization may be issued without a CAQ, providing the student's program remains unchanged and time required for completion is less than one year. Otherwise, a new CAQ will be required.

Where to obtain a CAQ

A student who resides in a country where there is no Service d'immigration du Québec must send the application to the appropriate MRCIQ regional office in Canada. Educational institutions usually provide the applicant with instructions on how to apply for a CAQ.

Refer to list at section 2.1.6.

A student who resides in a country where there is a Service d'immigration du Québec (SIQ) must apply to that office. The SIQ will review the application and verify that the student's financial resources are adequate. Once the application is approved, the SIQ issues the CAQ and advises the student to contact the visa office.

Refer to section 2.1 for details.

5.4 Prescribed institutions

Officers must confirm that students are not destined to an institution prescribed in Schedule III of the Immigration Regulations.

Refer to section 2.4.1 for details.

5.5 Where concerns exist about institutions

There may be cases when students present a Letter of Acceptance from an institution where concerns exists about its academic or administrative practices. If officers have information about such schools where there is

evidence that students never attend, attend infrequently or work illegally, they should pass this information to the CIC Regional office where the institution is located, or to the CPC–Vegreville, or to NHQ/SSE.

5.6 When the applicant is not eligible

If you determine that an applicant is not eligible for a student authorization, you should advise the person:

a) that you cannot issue a student authorization;

b) that the person may apply for a student authorization at a visa office, counselling the person on how to apply; and

c) that the person will be in contravention of the Act if he or she studies in Canada without an authorization.

If the applicant wishes to continue an application for admission, you may examine him or her for entry as an ordinary visitor (see PE 6, Examining Visitors) or initiate enforcement action (see Chapter PE 9, A20 Reports and Voluntary Withdrawal).

CIDA Student

If a CIDA student is found inadmissible, report the case to the CIDA NHQ Canadian Partnership Branch representative listed at section 2.5.5 b).

DFAIT Student

If a DFAIT student is found inadmissible, report the case to the International Council for Canadian Studies, as listed at section 2.5.7 b).

5.7 Assessing the application

Once you have determined that the person you are examining is eligible to obtain a student authorization, you must determine the following:

- Is the applicant a member of the inadmissible classes?
- Are the identity papers valid?
- Is the applicant from a special category country?
- Does the applicant require a medical examination?
- Does the applicant have to pay a cost–recovery fee?
- Do you have any doubt on the applicant's knowledge of English or French?
- Does the applicant have health insurance?

5.7.1 Inadmissible persons

Determine whether the applicant is described in any Section of A19 applying to inadmissible persons.

5.7.2 Identity papers

Review the relevant pages of the passport or identity document to determine its validity. Visitors are not required to have a passport valid for the entire period of the time being requested. Officers could, for example, give applicants entry for three years even though their passport expires in one year. Counsel applicants about the importance of renewing their passport, and advise them that they may be denied entry if they seek to enter Canada with an expired passport.

5.7.3 Special category country

Review IC 2, section 20. to determine if the student is from a special category country.

5.7.4 Medical examination

Determine whether the applicant must undergo a medical examination, as required by R21(4).

Six–month rule

Students who intend to be in Canada for more than 6 months, and have resided in a designated country for more than 6 months within the year preceding their arrival in Canada are required to undergo a medical examination.

Refer to APPENDIX E for non–designated countries.

Designated occupations

Students from non–designated countries must undergo a medical examination if they are to be employed in

- child care,
- primary or secondary teaching, and
- health services field occupations.

Students from designated countries must undergo a medical examination if they are to be employed in

- agricultural,
- child care,
- primary or secondary teaching, and
- health services fields.

Refer to section 3.4 for details.

5.7.5 Cost recovery fee

Determine whether you should assess a cost–recovery fee.

Refer to section 2.3.4 for exemptions.

The fee is $125 for a student authorization. Fees are payable by cash in Canadian funds, Visa or MasterCard; certified cheque or money order in Canadian funds payable to the Receiver General for Canada.

The fee is payable at the time the request is made. Officers will collect the cost–recovery fee only after they decide to issue a student authorization.

Refer to section 2.3 for details.

5.7.6 Applicant's knowledge of English or French

There may be cases where the officers feel that a student's lack of English or French will make it extremely difficult for an applicant to follow the desired course of studies. This should generally not be a concern, as institutions require a pass mark on language tests before offering admission, or have facilities for upgrading language skills. Nonetheless, where officers have serious doubts, they should advise NHQ/SSE.

Refer to section 3.2.9 for guidance.

5.7.7 Health insurance

Applicants should be counselled on the necessity to obtain health insurance. Different provinces have different requirements with respect to eligibility for provincial coverage. If provincial coverage is not an option, applicants should register for a private plan to cover the duration of their stay in Canada.

Refer to section 3.4.3 for details and APPENDIX F for list of provincial coverage

5.8 Issuing the authorization

If you decide to grant entry to a person as a student, you must:

- decide on the validity period of the student authorization;
- decide whether to impose terms and conditions;
- issue a student authorization, and
- counsel the student.

5.8.1 Validity period

The following are general guidelines which apply:

Post secondary

Issue long–term authorizations based on the length of time the student will require to complete the current course of study, with an additional three months to allow the student to prepare to return home or to arrange for post–graduate employment under E–08. Long–term authorizations apply regardless of the fact that the official acceptance letter from the university may only be valid for one year at a time.

Exceptions to this policy include situations where concerns exist about the student's financial means which are not strong enough to result in a refusal, or situations where concerns exist about the institution's academic or administrative practices.

Primary and secondary

Issue authorizations on a year–to–year basis unless students are dependants of persons with long–term authorizations, provided the period requested does not exceed that which has been given to the head of the family.

Québec

Authorizations should correspond to the validity of the CAQ.

CIDA

Issue yearly authorizations.

DFAIT

Issue an initial authorization for one–year with renewal valid for the tenure of the student's award.

Statesman and special category country

Issue a one–year authorization with yearly extensions. List of countries included in IC 2, APPENDIX C, and processing procedures outlined in IC 2, section 44.

Refer to section 3.7 for details.

5.8.2 Terms and Conditions

Terms and Conditions are contained in FOSS.

Required for all students attending educational institutions, other than primary and secondary schools:

attend an approved **type** of institution, without specifying which institution or program.

May be imposed at the discretion of the officer:

a) prohibited against engaging in employment;

b) attend a university, college or other institution that you specify by name; this does not apply to primary or secondary students;

c) leave Canada by a specific date;

d) prohibit from engaging in employment unless medical requirements have been met;

e) report for medical surveillance, examination or treatment.

Refer to 3.6 for details.

Medical instructions

If warranted by the applicant's medical condition, you must impose the terms and conditions as follows:

- the time and place the student must report for medical examination, surveillance or treatment or for any other purpose [R23(3)(k)];
- the times and places at which the student must furnish evidence of compliance with the terms and conditions. [R23(3)(l)].

Exemption

You cannot apply terms and conditions on a student authorization issued to a person who is on a Minister's Permit or to a refugee claimant who does not have valid visitor status.

Refer to section 3.6 for details.

5.8.3 Completing IMM 1442

Officers should prepare the student authorization form IMM 1442 by entering the data into FOSS, using the Full Document Entry screen. Generate the document on the full–document entry printer. If you need help with coding, use the FOSS help screens.

If the FOSS system is not operational, complete the IMM 1208 manually and enter the information in FOSS as soon as it is available.

Québec Student

Inscribe the number and expiry date of the CAQ in FOSS.

CIDA Student

CIDA students will be identified with code 599 on the student authorization.

DFAIT Student

DFAIT students sponsored under the Commonwealth Scholarship and Fellowship Plan will be identified by Code 506 on the student authorization. No special notation is required for Government of Canada Award students.

5.8.4 Counselling

When you are counselling a student, you should cover the following points:

a) the expiry date of the student authorization;

b) the terms and conditions that you have imposed;

c) the procedures for applying for an extension;

d) cost–recovery requirements, should the student need to change his or her student authorization or apply for an employment authorization;

e) procedures for applying for an employment authorization;

f) procedures for changing terms and conditions, such as how to apply for an extension or to request a change of educational institutions;

g) the importance of ensuring appropriate health insurance coverage.

5.9 Student employment

Refer to section 2.6 or APPENDIX A for details.

On campus

Full–time students registered in a degree or diploma–granting course are allowed to work on the campus of the institution at which they are registered without the need for an employment authorization. Officers should include the following notation on the student authorization:

"May accept employment on the campus of the institution at which the holder is registered in full–time studies".

Validation exempt

The following students require an employment authorization, but are exempt from validation under the code indicated at right:

Spouses of students EO7

Post graduation employment E08

CIDA students D30

Coop education and employment integral to studies D35

Destitute studentsC05

Students petitioned by a university E30

International Student and Young Worker programs E35

Refer to Table at APPENDIX B or APPENDIX C for E35 Programs

5.10 Students examined by visa offices

Non–CAIPS Visa Offices

Applicants processed by a non–CAIPS visa office will present a partially completed Form IMM 1208.

CAIPS Visa Offices

Applicants processed by a CAIPS visa office will present a Letter of Introduction. The document number generated by CAIPS which provides access to the appropriate document in FOSS, is printed at the top right–hand corner of the letter and begins with the letter F.

Process at POE

When a student arrives for examination at your POE with the required documentation issued by the mission overseas, you should determine:

Assessment

a) whether the student is still eligible to obtain a student authorization;
   - has there been any change in circumstances?
   - are the medical results still valid?

b) whether the student has paid the cost–recovery fee;

c) whether the student has become inadmissible since being issued the documentation by the visa office;

d) whether the student has funds available, taking into account that the visa office must have been satisfied that there were adequate funds available before issuing the visa; and

e) whether **post secondary students** are entering Canada with a student authorization with a period of validity for the full course of studies; if this is not the case, and if reasons have not been noted in the "Remarks" box, you should amend the authorization to reflect the full period of the course of study.

Issuing an authorization

Impose terms and conditions as appropriate and:

Students processed by a CAIPS visa office:

retrieve the information from FOSS utilizing the entry number indicated on the Letter of Introduction and generate a completed Form IMM 1442.

Students processed by non–CAIPS visa office:

a) complete the IMM 1208 and stamp the student's passport; and

b) enter the information from the IMM 1208 into FOSS.

6. PROCESSING AN APPLICATION IN CANADA

6.1 Persons Eligible To Apply In CAnada

Visitors in Canada eligible to apply for a Student Authorization from within Canada, and persons who are exempt from the need for a Student Authorization, are listed in APPENDIX D. Officers should check this list to determine an applicant's eligibility.

Essentially, immigration legislation requires visitors – students who apply to vary or cancel the terms and conditions of their admission, or to extend their stay in Canada, to submit an application in writing. Clients must provide enough information to enable the officer:

a) to determine whether the client is eligible, and

b) to make a decision.

6.2 Where clients apply

All visitors wishing to apply for a Student Authorization must do so in writing to the Case Processing Centre in Vegreville (CPCV). To apply, clients contact their local Canada Immigration Centre (CIC), TeleCentre or Canada Infocentre to obtain a visitor application kit. This kit contains the application forms, a guide book, a fee schedule and a pre–addressed envelope for the CPCV.

Applications are not dropped off at a CIC but rather mailed directly to the CPCV with the required documentation.

6.3 Role of CPCV and CIC

The CPCV is always the first point for persons wishing to apply for a student authorization in Canada. If certain difficulties develop where the CPCV cannot make a decision, officers will refer the case to the CIC in the client's region.

Negative decisions issued directly by the CPCV will be limited to cases which are incomplete and where attempts to contact the applicant have been unsuccessful, or cases where the client has failed to meet basic eligibility criteria.

Cases referred to the CIC for processing will be finalized there and will not be returned to the CPCV. However, this does not preclude the same client from submitting a new application at a future time to the CPCV.

Refer to section 6.12 for details of referral criteria.

6.4 Valid Visitor status

Persons cease to be visitors when they

a) fail to comply with any term or condition under which they are authorized to remain in Canada;

b) attend an educational institution or engage in employment in Canada without having been authorized to do so;

c) remain in Canada for a period of time greater than that for which they are authorized to remain;

d) have been issued a departure order or have been ordered deported and the order has not been stayed or quashed.

6.5 Status as of date application postmarked

It has been determined that the postmark will be considered to be the effective date of application, or 7 days prior to receipt of the application if the postmark is illegible. This decision applies in the case of applications mailed to a CPC where the expiry of status may be a factor.

6.5.1 Out of status

If upon receipt of the application the client's status has expired, the client is to be considered out of status. An A27(2) report should be completed.

6.5.2 Implied status

A person whose visitor status has expired after the application was received at the CPCV will be considered in status until a decision is made on the application. A person who was in status at the time the application was made is entitled to a decision on this application. This does not allow a person to make application for an extension after the expiry date of the visitor status.

The Canadian courts have ruled that the applicant cannot be held accountable for our administrative delays. Therefore, if there is a time lapse between the time of receipt of an application and its review, the client remains in status until a decision on the application is made.

6.5.3 Approval where implied status occurred

When the application is approved, officers should issue the appropriate document. The date of issue shown on the document represents the date a decision was taken, and the decision cannot be backdated. OFFICERS SHOULD NOT BACKDATE THE DOCUMENT. Observations can be made in the remarks box of the document explaining that a decision was rendered after the expiration date but that the application was received within validity.

6.5.4 Refusal where implied status occurred

When the application is refused, the client must be informed of the decision. Established procedures are to be followed. The letter to the client must not offer any suggestion that status is implied until eligibility can be met. The only advice which should be given to clients on this matter is a warning as to the expiry date of their status.

Communication

Rules of fairness require that a person who makes an application be informed of the ultimate decision respecting the application. Clients will be considered in status until a decision is made and communicated to them.

A2(4) provides that when a decision is rendered other than in the presence of the person, the person shall be deemed to have received the decision seven days after the decision was sent to the person.

Recording

It is imperative that in these cases an NCB (non–computer based entry) is entered into FOSS so that if the client is approached by Immigration or a police agency, records will be available showing that a decision on the client's application has been reached and communicated to the client.

6.6 Service standards at CPCV

The CPCV will communicate a decision within 25 days of the date posted. Applicants are advised not to contact the CIC or CPCV regarding their application before that date. Enquiries regarding the status of an application are made to the local Telecentre or CIC enquiries line, not to the CPCV.

6.7 Cases which cannot be completed at the CPCV

There will be cases which Immigration Officers cannot complete at the CPCV. These cases will be forwarded to the CIC in the client's area. That office will complete the processing of the application. In these cases, the CPCV sends the client a letter confirming that the application has been referred.

6.8 Documents required with application

The following documents must be provided with application:

- Application Form IMM 1249
- Cost–Recovery Fee
- Letter of Acceptance
- Proof of identity
- Proof of financial support
- CAQ for students destined to Québec

6.9 Reviewing the documentation

Check to ensure that all documents are enclosed with the application and that these have been properly completed.

Québec bound students

For students destined to Québec who are in possession of a valid CAQ, immigration officers are not required to conduct a full assessment. An officer may issue the student authorization after having ensured that the student meets the usual statutory requirements, and that financial resources meet Québec's standards outlined at section 3.3.5.

CIDA and DFAIT

Special processing arrangements for students sponsored by CIDA and DFAIT are outlined throughout these procedures. Officers should ensure that all applicable instructions at section 2.5 are followed carefully.

6.9.1 Form IMM 1249

Check to ensure that Application Form IMM 1249 has been properly completed and signed by the applicant. An application which lacks proper signature should be rejected and returned to the client with appropriate notation.

6.9.2 Cost Recovery Fee

Determine whether a cost–recovery fee is payable and that payment has been included with the application.

Refer to section 2.3.4 for details.

The fee is $125 for a student authorization, payable at the time the request is made and should be included with the application. The fee is payable by certified cheque or money order made out to The Receiver General for Canada; Visa or MasterCard.

An application which lacks the proper cost recovery fee should be rejected and returned to the client with appropriate notation.

Refer to section 2.3 for details.

6.9.3 Letter of Acceptance

Each application must be accompanied by a Letter of Acceptance from the educational institution which the student will be attending.

Exemption

Dependents of holders of student and employment authorizations are exempt from this requirement.

CIDA and DFAIT

Because of special sponsorship arrangements, it can be assumed that students sponsored by CIDA or DFAIT meet requirements related to acceptance, institution, course of study and language.

Conditional

Conditional letters of acceptance are admissible, and students should benefit from long–term authorizations.

Refer to section 3.2.3 for details.

Using the following guidelines, you should check to ensure that the Letter of Acceptance is complete, and that the course of study meets legislative requirements.

Standard information

The Letter of Acceptance should include the following basic information:

- The name, date of birth, mailing address of student;
- The course for which the student has been accepted;
- The estimated duration or date of completion of course;
- The date on which course begins;
- The last date on which student must register for course;
- The academic year which student will be entering;
- Whether course is full–time or part–time;
- The tuition fee;
- Any condition related to the acceptance;
- Clear identification of the educational institution;
- Licensing information for private institutions.

Refer to section 3.2 for details.

Course of study

Exemption:

The following criteria do not apply to privately–funded institutions administered by the Post–Private Secondary Education Commission in British Columbia, which are deemed by provincial statute to meet these requirements.

Requirements:

The Letter of Acceptance must show that the applicant will be pursuing a course of studies which meets at least one of the following regulatory requirements:

- Is at least 6 months in duration and involves at least 24 hours of instruction per week; [17(1)(a)]
- is given by a chartered college or university, or by any other publicly funded institution; [17(1)(b)]
- is recommended by any department or agency of the Canadian or a provincial government; [17(1)(c)]
- is incidental and secondary to the applicant's main purpose for being in Canada; [17(1)(d)]
- involves upgrading of skills or language training and is given at a provincially or federally licensed institution [17(1)(e)].

Refer to sections 3.2.6 and 3.2.7 for details.

6.9.4 Proof of funds

The applicant should present a financial document which officers must review to determine that adequate financial resources are available to support the applicant and any accompanying dependants for the first year of the course of study.

CIDA and DFAIT

Single students sponsored by CIDA or DFAIT are deemed to have sufficient funds by virtue of their sponsorship, but must demonstrate that they have sufficient additional funds to support any accompanying dependants.

Refer to sections 3.3.4 and 3.3.5 for assessment formula.

Generally speaking, students enrolled in post–secondary studies will already have satisfied a visa officer of their continuing access to funds. If an application to continue in post–secondary studies is not accompanied by proof of funds, this should not be a barrier to issuing the authorization, provided the applicant is otherwise eligible. Experience has shown that students who have difficulty in maintaining themselves will often not be allowed to continue studies if tuition fees cannot be paid, or will apply for an employment authorization as a temporarily destitute student.

Refer to section 3.3 for details.

6.9.5 Proof of identity

Applicants should provide proof of identity such as a passport, a travel document or official identity document, or photocopies of the following pages: identity pages, date and place of issue and validity date.

Officers must be satisfied that applicants have a valid passport upon presentation of their application – they are not required to have a passport valid for the entire duration of their course of studies.

Persons exempt from a passport requirement [R14(4)] should provide an acceptable personal identification such as citizenship document, national identity document, birth certificate, etc.

6.9.6 Certificat d'acceptation du Québec

Students destined to an educational institution in Québec require a CAQ, unless they are:

- chosen under a government funded program for developing countries as sponsored by CIDA;

- dependants of diplomats accredited to Canada;
- enrolled in a part–time course of less than 20 hours per week;
- enrolled in intensive French or English courses of at least 20 hours per week, for a maximum period of 12 weeks;
- in possession of a Certificat de sélection du Québec (CSQ) when a decision has been made by Canada Immigration to accept to process the application for permanent residence in Canada.

Students who have not finished their course at CAQ expiry

There may be cases where students have not completed their course of study within the initially planned timeframe. In these cases, a new CAQ may not be required, provided studies are finished within twelve months of the CAQ's expiry date. During this period, a new student authorization may be issued without a CAQ, providing the student's program remains unchanged and time required for completion is less than one year. Otherwise, a new CAQ will be required.

Refer to section 2.1 for details.

6.10 Prescribed institutions

Officers must confirm that students are not destined to an institution prescribed in Schedule III of the *Immigration Regulations*.

Refer to section 2.4.1 for details.

6.11 Where concerns exist about institutions

There may be cases when students present a Letter of Acceptance from an institution where concerns exists about its academic or administrative practices. If officers have information about such schools where there is evidence that students never attend, attend infrequently or work illegally, they should pass this information to the CIC Regional office where the institution is located, or to the CPC–Vegreville, or to NHQ/SSE.

6.12 What to do when the application is incomplete

The guide book and forms in each Visitor Application Kit clearly states the information that the applicant must supply and a document checklist is provided as an aid. The following statement is also found in the kit: "Your forms will be returned to you if you omit any of the information requested".

At the CPCV

It is appropriate to make a good faith effort to obtain the required information from the client where there is a reasonable chance that the client has the needed information, or where the client's status will expire prior to the information being returned to the processing office. Officers are to use their judgment in determining the most efficient method of addressing the difficulties. In some cases, a telephone call may best serve the purpose; in others, it may be necessary to return the application and documents to the client with a written request for information.

At the CIC

In addition to seeking information by phone or mail, officers at the CIC may contact the clients asking them to come to the CIC for an interview, or to complete the documentation.

6.13 Criteria for referring CPCV cases to CICs

Although it has been determined that all applications for student authorizations will be processed at CPCV, some will need to be referred to local immigration offices. As a basic principle, the number of cases referred to CICs should be minimized, and should be initiated on the basis that the local CIC will be able to add value in bringing the case to conclusion.

In order to minimize handling, cases referred to a local immigration office for processing will be finalized at that office, and will not be returned to CPCV. However, this does not preclude the same client from submitting a new application at a future time to the CPCV.

The following criteria have been developed to clarify which cases may be transferred:

a) cases which involve an in-depth assessment of bona fides or degree of hardship and require the use of judgment in order to arrive at a decision;

b) cases where a refusal decision requires the exercise of discretion;

c) potential refusals based on criminal, security or medical inadmissibility which could lead to an Act 27(2) report and inquiry;

d) cases of visitors who are in Canada for more than one year where it has not been clearly established that their extended stay is for legitimate purposes;

e) cases of suspected fraud of statutory eligibility criteria;

f) cases for which regional offices or NHQ have generated a referral;

g) cases where it is necessary to interview the client in order to obtain information or clarification of key points;

h) cases where enforcement action may be indicated, including all 27(2) cases which are not resolved through reinstatement or the issuance of a Minister's Permit;

i) cases identified for referral by the CPCV Program Analysis Unit.

6.14 Procedures for referring cases from CPCV to CIC

When a case is referred to a local CIC, the CPCV will provide full reasons for referral. The FOSS/WIP screen will be completed and a copy of the letter sent to the client forwarded to the local immigration office.

6.15 Negative decision by CPCV

CPCV refusal decisions will be limited to applications which fail to meet established eligibility criteria.

Basis for refusal

It is appropriate to make a good faith effort to obtain the required information from the client where there is a reasonable chance that the client has the needed information, or where the client's status will expire prior to the information being returned to the CPCV. Where the information cannot be obtained, the application should be refused.

The department is fully satisfied that the application guidebook is a valid and complete self-assessment tool. Where the client has failed to provide the information or documentation requested in the kit, then refusal is appropriate.

Refusal of an application is a serious step and should not be done hastily or for inappropriate reasons. Officers must distinguish between cases where the client has failed to provide information that is necessary to determine eligibility, and those cases where the information missing is non–essential.

It must be remembered that the underlying assumption of the mail–in system is that our clients are honest and law–abiding individuals. In cases where the client states a fact, officers should assume that the fact stated is true unless they have reasonable evidence to the contrary.

Advising the client

The client must be advised in writing, and full cost recovery fees must still be collected. When advising the client of the refusal, officers must be guided by the principals of fairness and natural justice. They must provide a full and complete explanation to the client of the actual reason for refusal.

CIDA and DFAIT

Refer to section 6.17.

Recording a refusal

In order to accurately record a refusal, officers must enter an NCB (non–computer based entry) on the system. This entry results in the automatic capture of the necessary data.

6.16 Interviews by CICs

In some circumstances, when CICs are reviewing cases referred by the CPCV, it may be necessary to interview clients. Such circumstances may include:

a) if there are questions or doubts concerning clients' reasons for wishing to remain in Canada, the arrangements made for their care and support, and their ability or willingness to leave Canada;

b) where the officer intends to refuse and needs more information before finalizing the case.

6.17 Negative decision by CIC

When the application is refused, the client must be advised of the decision and of the reasons for refusal. A written decision is not necessary in every case; in some cases, it could take the form of an oral communication.

Counsel client

Counsel the client regarding the possible consequences of studying in Canada without authorization. Remind the client who has valid visitor status of the date that his/her visitor status will expire. Inform clients of what action they can take to become eligible for student authorizations.

CIDA and DFAIT

Refer to section 6.18.

Recording a decision

It is imperative in these cases that an NCB (non–computer based entry) be entered into FOSS. This entry results in the automatic capture of the necessary data, providing a record for Immigration Centres or police agencies showing that a decision on the client's application has been reached and communicated to them.

6.18 Negative decisions of CIDA and DFAIT students

When a CIDA student is found inadmissible, the visa officer will report the case to the local CIDA representative or to the CIDA NHQ Canadian Partnership Branch representative listed at section 2.5.5 b).

When a DFAIT student is found inadmissible, the visa officer will report the case to the International Council for Canadian Studies, as listed at section 2.5.7 b).

6.19 Approving the application

If you decide to grant status to a person as a student, you must:

- decide on the validity period of the student authorization;
- decide whether to impose terms and conditions;
- issue a student authorization;
- issue an employment authorization, if required.

6.19.1 Validity period

The following are general guidelines which apply:

Post secondary

Issue long–term authorizations based on the length of time the student will require to complete the current course of study, plus an additional three months to allow the student to prepare to return home or to arrange for post–graduate employment under E–08. Long–term authorizations apply regardless of the fact that the official acceptance letter from the university may only be valid for one year at a time.

Exceptions to this policy include situations where concerns exist about the student's financial means which are not strong enough to result in a refusal, or situations where concerns exist about the institution's academic or administrative practices. In these cases, authorizations should be limited to one year.

Primary and secondary

Issue authorizations on a year–to–year basis unless students are dependants of persons with long–term authorizations, provided the period requested does not exceed that which has been given to the head of the family.

Québec

Issue authorizations corresponding to the validity of the CAQ.

CIDA

Issued yearly authorizations.

DFAIT

Issue an initial authorization for one year with renewal for the tenure of the student's award.

Statesman and special category country

Issue a one–year authorization with yearly extensions. List of countries included in APPENDIX C of IC 2, and processing procedures outlined in IC 2, section 44.

Refer to section 3.7 for details.

6.19.2 Terms and Conditions

Terms and Conditions are contained in FOSS.

Required for all students attending educational institutions, other than primary and secondary schools:

attend an approved **type** of institution, without specifying which institution or program.

May be imposed at the discretion of the officer:

a) prohibited against engaging in employment;

b) attend a university, college or other institution that you specify by name; this does not apply to primary or secondary students;

c) leave Canada by a specific date;

d) prohibit from engaging in employment unless medical requirements have been met;

e) report for medical surveillance, examination or treatment.

Refer to section 3.6 for details.

6.19.3 Completing IMM 1442

Prepare the student authorization Form 1442 by entering the data into the FOSS computer system and having it generate the document on the Full Document Entry printer.

Québec Student

Inscribe the number and expiry date of the CAQ in FOSS.

CIDA Student

Identify CIDA students with code 599 on the authorization.

DFAIT Student

Identify DFAIT students sponsored under the Commonwealth Scholarship and Fellowship Plan by Code 506 on the authorization. No special notation is required for Government of Canada Award students.

6.19.4 Employment authorization

Refer to table in APPENDIX A for exemptions

On campus

Full–time students registered in a degree or diploma–granting course are allowed to work on the campus of the institution at which they are registered without the need for an employment authorization. Officers should inlcude the following notation on the student authorization:

"May accept employment on the campus of the institution at which the holder is registered in full–time studies".

Validation exempt

The following students require an employment authorization, but are exempt from validation under the code indicated at right:

Spouses of students EO7

Post graduation employment E08

CIDA students D30

Coop education and employment integral to studies D35

Destitute students C05

Students petitioned by a university E30

International Student and Young Worker programs E35

Refer to APPENDIX B and APPENDIX C for E35 Programs.

6.20 Change of status of CIDA and DFAIT students

CIDA and DFAIT students are required to return to their country of residence once their study program is completed. As a requirement of admission, students must sign a Consent to Release Information Form When CIDA or DFAIT sponsored students, or their dependants, make an application to change their status from student to permanent resident or submit a refugee claim, officers should contact the sponsoring agency to request a copy of the individual Consent to Release Information Form. Once this form is received, officers should advise CIDA or DFAIT of the application for change of status.

CIDA address at section 2.5.5 b); DFAIT address at 2.5.7 b).

Officers will then proceed to assess individual cases in the usual manner.

6.21 Recording a decision

It is important for officers to report all approved and refused decisions in FOSS.

6.21.1 Approved applications

FOSS automatically records and counts any documents produced. Documents prepared by hand must be entered into FOSS via Status Entry and are thus also automatically recorded.

6.21.2 Refused applications

Information concerning all refused applications must be entered as an NCB (non–computer based entry) into FOSS. This entry results in the automatic capture of the necessary data.

6.22 Releasing information

Refer to section 2.2 for complete information on the release of information and the application of the *Privacy Act*.

APPENDIX A

STUDENT EMPLOYMENT

For full instructions, refer to appropriate manual section indicated in column at right.

CATEGORY	*EMPLOYMENT AUTHORI-ZATION*	*VALI-DATION EXEMPT CODE*	*VALIDITY PERIOD*	*GENERAL ELIGIBILITY*	*MANUAL SECTION*
ON CAMPUS EMPLOYMENT	Exempt 19(1)(x)	Not appli-cable	Duration of S.A.	Full time student in degree/diploma granting course; Work restricted to campus of institution where registered	2.6.2
ON–CAMPUS EMPLOYMENT FOR GRADUATE, TEACHING OR RESEARCH ASSISTANTS	Exempt 19(1)(x)	Not appli-cable	Duration of S.A.	Full time student at approved institution; work to be performed directed by department head; work may take place outside campus at affiliated research or similar institute.	2.6.2
DESTITUTE STUDENTS	Required	Exempt C05	Coincide with term of study	Students on valid student authorizations who have become destitute due to circumstances outside their control.	2.6.3
CIDA STUDENTS	Required	Exempt D30	Term of S.A.	Students sponsored by CIDA when intended employment is part of study program arranged by CIDA.	2.6.4 2.5.5
EMPLOYMENT FORMS INTEGRAL PART OF COURSE OF STUDY	Required	Exempt D35	Term of S.A.	Students whose intended employment forms integral part of course of study such as Undergraduate co–op Programs; some programs offered by career colleges or language schools; some high school programs such as Grade 11–12 students in B.C.	2.6.5
SPOUSES OF STUDENTS	Required	Exempt E07	Coincide with spouse's S.A.	Spouses of full–time students are eligible for open or open/restricted employment authorizations, depending on medical requirements having been met.	2.6.6

CATEGORY	*EMPLOYMENT AUTHORI-ZATION*	*VALI-DATION EXEMPT CODE*	*VALIDITY PERIOD*	*GENERAL ELIGIBILITY*	*MANUAL SECTION*
EMPLOYMENT AFTER GRADUATION	Required	Exempt E08	12–month cumulative; One time only	Students who have graduated from post–secondary institution, in possession of valid student authorization, whose employment must be consistent with recently completed course of study and which must commence within 60 days of issuance of marks.	2.6.7
STUDENTS ON SCHOLARSHIP PETITIONED BY A UNIVERSITY	Required	Exempt E30		Students who have been accepted on an academic or athletic scholarship, petitioned by the University, allowed to take employment arranged by the institution.	2.6.8
INTERNATIONAL STUDENT & YOUNG WORKER EMPLOY-MENT PROGRAMS	Required	Exempt E35	From 1 to 12 months	Participants in a number of programs usually based on reciprocity or exchanges, outlined in this Chart.	2.6.9 APPENDIX B APPENDIX C

APPENDIX B
INTERNATIONAL STUDENT AND YOUNG WORKER EMPLOYMENT PROGRAMS – ALPHABETICAL LIST BY PROGRAM – VALIDATION EXEMPTION CODE E35

NAME OF PROGRAM	*COUNTRY*	*PARTICIPATING ORGANIZATION*	*AGE*	*TYPE OF AUTHORIZATION*	*VALIDITY PERIOD MAXIMUM*
Agence Québec	Belgium	Wallonie Bruxelle	18–30	employer specific	4 to 12 months
Association Québec–France	France		18–30	employer specific	up to 6 months
Canada Switzerland Young Trainee Exchange Program	Switzerland		18–30	employer specific in field of study	18 months
Canada Netherlands Young Workers Exchange Program	Netherlands		18–30	employer specific in field of study	12 months
Canada Germany Young Worker Exchange Program	Germany		18–30	employer specific in field of study	18 months
Canada Finland Career Development Program	Finland		18–30	employer specific career related	18 months
Canada–France Young Worker Exchange Program 1956 Agreement	France		18–35	employer specific in field of study	18 months
Canadian Association of University Teachers of German Workstudent Program	Germany		18–30		2 to 3 months during the summer

NAME OF PROGRAM	*COUNTRY*	*PARTICIPATING ORGANIZATION*	*AGE*	*TYPE OF AUTHORIZATION*	*VALIDITY PERIOD MAXIMUM*
Canadian Crossroad International (CCI/PAQ)	Multilateral exchange	Programme Africain au Québec Carrefour Canadien International	18–30	employer specific	4 to 5 mths, May to Sept. or Sept. to May
Comité conjoint des Races de boucherie	France		18–30	employer specific	12 months
Cooks and Chefs Apprentice Exchange Program	United States		18–30	employer specific	12 months
German–Canadian Society Program (DKG)	Germany		18–30	employer specific open*	3, mid–July to end October
International Cooperative Education Camosum College, B.C.	Czech	Technical University of Ostrava;	18–30	employer specific	12 months
International Cooperative Education Community College of St.Andrews New Brunswick	England	Thames Valley University, London; Highbury College, London;	18–30	employer specific	12 months
International Cooperative Education Georgian College, Ont.	U.K.	Glasgow College of Food Technology;	18–30	employer specific	12 months
	Italy	Scula Internazionale di Science Turistiche			
International Cooperative Education McMaster University, Ontario	France	Université de Compiègne	18–30	employer specific	12 months
International Cooperative Education Queen's University	Germany	University of Karisauke	18–30	employer specific	12 months
International Cooperative Education Ryerson Polytechnical Institute, Ont.	U.K.	Teesside Polytechnic	18–30	employer specific	12 months

NAME OF PROGRAM	*COUNTRY*	*PARTICIPATING ORGANIZATION*	*AGE*	*TYPE OF AUTHORIZATION*	*VALIDITY PERIOD MAXIMUM*
International Cooperative Education, Sheridan College	Germany	Berussakademie	18–30	employer specific	12 months
International Cooperative Education Sir Standord University, Ontario	Germany	Breussakademie;	18–30	employer specific	12 months
	Japan	Chuo College;			
International Cooperative Education University of Ottawa, Ont.	France	École U. d'ingénieurs de Lille;	18–30	employer specific	12 months
International Cooperative Education University of Victoria, B.C.	Australia	Swinburne Institute of Technology; Ballarat University;	18–30	employer specific	12 months
	France	Institut des Services appliqués, Rennes;			
	Germany	Fancholshschule Korlsruke;			
	Netherlands	Hogeschool West Brabant;			
	U.K.	University of Surrey;			
	U.S.A.	U. of Philadelphia, Drexel;			
	Russia	Moscow State University;			

NAME OF PROGRAM	*COUNTRY*	*PARTICIPATING ORGANIZATION*	*AGE*	*TYPE OF AUTHORIZATION*	*VALIDITY PERIOD MAXIMUM*
International Cooperative Education University of Waterloo	Australia	University of New South Wales;	18–30	employer specific	12 months
	France	Université de Compiègne; Université de Nantes; MICEFA, Triade;			
	Germany	Techische U., Braunshweig; U. of Pederburn;			
	Ireland	Ulster Polytechnic;			
	Netherlands	Trente University; Eindhobern University;			
	U.K.	University of Leeds;			
	U.S.A.	University of Cincinnati; Northeastern University.			
International Association for Exchange of Students of Economics and Commerce (AIESEC)	Multilateral exchange		18–30	employer specific	18 months
International Visitor Exchange Program of the Mennonite Central Committee of Canada (IVEP)	Multilateral exchange	Mennonite Central Committee, Winnipeg, Manitoba	18–20	employer specific	12 months
International Rural Exchange (IRE)	Multilateral exchange		18–30	employer specific	6–12 months
International Fund for Ireland	Ireland		18–30	employer specific open*	12, with possible 12 month extension
International Association for Exchange of Student for Technical Experience (AIESTE)	Multilateral exchange		18–30	employer specific	12 months

NAME OF PROGRAM	*COUNTRY*	*PARTICIPATING ORGANIZATION*	*AGE*	*TYPE OF AUTHORIZATION*	*VALIDITY PERIOD MAXIMUM*
International Agricultural Exchange (IAEA)	Multilateral exchange		18–30	employer specified as IAEA	9 months, Feb. to Nov. 30
Mouvement Québécois des Chantiers	Armenia Belgium Czech France Germany Lithuania Republic of Belarus Russia Slovakia Spain	Republic Headquarters of Student Brigades; Voluntary Service of Armenia (HUJ) Compagnons Bâtisseurs; Agence Québec; Wallonie Bruxelles; Centre for International Youth Exchange and Tourism; Compagnons Bâtisseurs; Concordia; Rempart; Vereinigung Junger Freiwilliger (Union Young Volunteers VJF) Center of Student Activities Belarussian Association of International Yough Work (ATM) Youth Voluntary Service NEX – Slovakia (Association for Int. Yough Exchange & Tourism) Institut Catala de Servecis a la Joventut	18–25	employer specific	1 month
Office Franco–Québécois pour la jeunesse	France		18–30	employer specific	12 months
Student Work Program Abroad See separate attachment					

NAME OF PROGRAM	*COUNTRY*	*PARTICIPATING ORGANIZATION*	*AGE*	*TYPE OF AUTHORIZATION*	*VALIDITY PERIOD MAXIMUM*
The Gap Activity Projets Limited	U.K.	Examples of participating Canadian schools are Ashbury College, Upper Canada College, St.John's College.	18–30	employer specific	12
University of Alberta	Sweden	Swedish University of Agricultural Sciences; University of Helsinki;	18–30	employer specific	4 months, from May to September.
University of Ottawa	Netherlands	Haagse Hogeschool	No restriction	open	4 – 8 months
	Australia	Swinburne Institute	No restriction	open	4 – 8 months
Volunteer Abroad Program of the Canadian Federation of Student Services	Multilateral		18–30	employer specific volunteer for camps	6 months, between June & end of Sept.
Working Holiday Program See separate attachment					
Young Farmers Québec	Luxembourg		18–30	employer specific	12

***Note:** When issuing an "open" employment authorization, if the applicant has not passed an immigration medical, an occupation restriction must be specified. Once the applicant has completed the medical requirements the term and condition can be removed.*

STUDENT WORK PROGRAM ABROAD (SWAP)			
COUNTRY	*AGE*	*TYPE OF AUTHORIZATION*	*VALIDITY PERIOD MAXIMUM*
Australia	18–25 26–30 if entry is reciprocal	open*	12 months
Czechoslovakia	18–30	open*	4 months from 1 June to 31 October
Finland	18–30	open*	3 months

STUDENT WORK PROGRAM ABROAD (SWAP)			
COUNTRY	*AGE*	*TYPE OF AUTHORIZATION*	*VALIDITY PERIOD MAXIMUM*
France Stagiaire apprenticeship	18–30	open* employer specific to field of study	4 months from mid–June to end October 9 months maximum
Germany	18–30	open*	3 to 4 months from July 1 to October 31
Ireland	18–30	open*	4 to 6 months
Jamaica	18–30	open*	4 months
Japan	18–25 or 26–30 at discretion of visa officer	open*	12 months
New Zealand	18–30	open*	6 months
Poland	18–30	open*	4 months from 1 June to 31 October
South Africa	18–30	open*	6 months; enrolled fulltime in post secondary studies; have medical insurance; have return ticket/ticket to a 3rd country and $1,000;
The Netherlands	18–30	employer specific	6 months
United Kingdom	18–29, full–time or part–time student or graduates of the year	open*	12 months
United States	18–30	open*	6 months from 1 May to end October

***Note:** When issuing an "open" employment authorization, if the applicant has not passed an immigration medical, an occupation restriction must be specified. Once the applicant has completed the medical requirements the term and condition can be removed.*

WORKING HOLIDAY PROGRAM (WHP)			
COUNTRY	*AGE*	*TYPE OF AUTHORIZ-ATION*	*VALIDITY PERIOD* *maximum*
Australia	18–25 26–30 if entry is reciprocal	open*	12 months
Finland	18–30	employer specific	6 months
France	18–30	employer specific	3 months
Germany	18–30	employer specific	3 to 6 months
Ireland	18–30	employer specific	12 months
Japan	18–25 or 26–30 at discretion of visa officer	open*	12 months
Korea	18–25	open	6 months
New Zealand	18–30	open*	12 months
Sweden	18–30	employer specific	6 months
The Netherlands	18–30	employer specific in field of study	6 months
United Kingdom	18–29	employer specific	6 – 12 months

***Note:** When issuing an "open" employment authorization, if the applicant has not passed an immigration medical, an occupation restriction must be specified. Once the applicant has completed the medical requirements the term and condition can be removed.*

APPENDIX C

INTERNATIONAL STUDENT AND YOUNG WORKER EMPLOYMENT – ALPHABETICAL LIST BY COUNTRY – VALIDATION EXEMPTION CODE E35

Note: *When issuing an open employment authorization, if the applicant has not passed an immigration medical an occupation restriction must be specified. See section 3.6.3. Once the applicant has completed the medical requirements, the term and condition can be removed.*

COUNTRY	*NAME OF PROGRAM*	*ELIGIBILITY*	*TYPE OF WORK PERMIT*	*DURATION*
Armenia	Mouvement Québécois des Chantiers/Republican Headquarters of Student Brigades–Voluntary Service of Armenia (HUJ)	18–30 years of age	employer specific	1 month maximum
Australia	Working Holiday Program (WHP)	18–25 years of age 26–30 if their entry is reciprocal	open *	12 months maximum
Australia	Student Work Abroad Program (SWAP)	18–25 years of age 26–30 if their entry is if mutual advantage	open *	12 months maximum
Belgium	Agence Québec/ Wallonie–Bruxelles	18–30 years of age	employer specific	4–12 months maximum
Belgium	Mouvement Québécois des Chantiers/Compagnons Bâtisseurs/Agence Québec/Wallonie Bruxelles	16–25 years of age	employer specific	1 month maximum
Czech Republic	Mouvement Québécois des Chantiers/Centre for International Youth Exchange and Tourism	18–25 years of age	employer specific	1 month maximum
Czechoslovakia	Student Work Abroad Program (SWAP)	18–30 years of age	open *	4 months from 1 June to 31 October
Finland	Working Holiday Program (WHP)	18–30 years of age	employer specific	6 months maximum
Finland	Canada–Finland Career Development Program	18–30 years of age	employer specific career related	18 months maximum
Finland	Student Work Abroad Program (SWAP)	18–30 years of age	open *	3 months maximum

COUNTRY	*NAME OF PROGRAM*	*ELIGIBILITY*	*TYPE OF WORK PERMIT*	*DURATION*
France	Working Holiday Program (WHP)	18–30 years of age	employer specific	3 months maximum
France	Student Work Abroad Program (SWAP) – stagiaire apprenticeship	18–30 years of age	open * – employer specific in feild of study	4 months maximum from mid–June to end of October – 9 months maximum
France	Canada–France Young Worker Exchange Program 1956 Agreement	18–35 years of age	employer specific in field of study	18 months maximum
France	Association Québec France	18–30 years of age	employer specific	up to 6 months maximum
France	Office Franco–Québécois pour la jeunesse	18–30 years of age	employer specific	12 months maximum
France	Mouvement Québécois des Chantiers/Compagnons Bâtisseurs	18–25 years of age	employer specific	1 month maximum
France	Mouvement Québécois des Chantiers/Concordia	18 to 25 years of age	employer specific	1 month maximum
France	Mouvement Québécois des Chantiers/Rempart	18 to 25 years of age	employer specific	1 month maximum
France	Comité Conjoint des Races de Boucherie	18 to 30 years of age	employer specific	12 months maximum
Germany	Student Work Abroad Program (SWAP/CIEE)	18–30 years of age	open *	3–4 months maximum from July 1st to 31st of October
Germany	Mouvement Québécois des Chantiers/Vereinigung Junger Freiwilliger (Union of Young Volunteers) (VJF)	18–25 years of age	employer specific	1 month maximum
Germany	Working Holiday Program (WHP)	18–30 years of age	employer specific	3–6 months maximum
Germany	Canada–Germany Young Worker Exchange Program	18–30 years of age	employer specific in field of study	18 months maximum
Germany	German–Canadian Society Program (DKG)	18–30 years of age	employer specific and open *	3 months from mid–July to end of October

COUNTRY	*NAME OF PROGRAM*	*ELIGIBILITY*	*TYPE OF WORK PERMIT*	*DURATION*
Germany	Canadian Association of University Teachers of German Workstudent program (CAUTG)	18–30 years of age		2–3 months during the summer months
Ireland	Working Holiday Program (WHP)	18–30 years of age	employer specific	12 months maximum
Ireland	Student Work Abroad Program (SWAP)	18–30 years of age	open *	4–6 months maximum
Ireland	International Fund for Ireland	18–30 years of age	employer specific/ open	12 months with a possible 12–month extension on approval of EAITC
Jamaica	Student Work Abroad Program (SWAP)	18 to 30 years of age	open *	4 months maximum
Japan	Working Holiday Program (WHP)	18–25 years of age 26–30 years of age at the discretion of visa officers	open *	12 months maximum
Japan	Student Work Abroad Program (SWAP)	18–25 years of age 26–30 years of age at the discretion of visa officers	open *	12 months maximum
Korea	Working Holiday Program (WHP)	18–25 years of age	open	6 months
Lithunia	Mouvement Québécois des Chantiers/Center of Student Activities (Litmina)	18–30 years of age	employer specific	1 month maximum
Luxembourg	Young Farmers Quebec/Luxembourg	18–30 years of age	employer specific	12 months maximum
Multilateral Exchange	International Agricultural Exchange (IAEA)	18–30 years of age	employer should be specified as IAEA	February to November 30 each year
Multilateral Exchange	International Rural Exchange (IRE)	18–30 years of age	employer specific	6–12 months maximum
Multilateral Exchange	Canadian Crossroad International/Carrefour Canadien International – Programme Africains au Québec Quebec (CCI)/(PAQ)	18–30 years of age	employer specific	4–5 months either from May to September or September to December

COUNTRY	*NAME OF PROGRAM*	*ELIGIBILITY*	*TYPE OF WORK PERMIT*	*DURATION*
Multilateral Exchange	International Visitor Exchange Program of the Mennonite Central Committee of Canada (IVEP)	18–30 years of age	employer specific	12 months maximum beginning in August
Multilateral Exchange	International Association for Exchange of Student for Technical Experience (IAESTE)	18–30 years of age	employer specific	12 months maximum
Multilateral Exchange	International Association for Exchange of Students of Economics and Commerce (AIESEC)	18–30 years of age	employer specific	18 months maximum
Multilateral Exchange	Volunteer Abroad Program of the Canadian Federation of Student Services	18–30 years of age	employer specific (volunteer for camps)	6 months maximum betwwen June and end of September

COUNTRY	*NAME OF PROGRAM*	*ELIGIBILITY*	*TYPE OF WORK PERMIT*	*DURATION*
Multilateral Exchange	International Cooperative Education (ICE) – Fanshawe College, Ont./New Hampshire College, USA; or Sheffield Polytechnic, UK U. of Waterloo, Ont./U. of New South Wales, Australia; or U. of Compiègne, France; or U. of Nantes, France; or MICEFA, Triade, France; or Techische U. Braunshweig, Germany; or U. of Paderburn, Germany; or Ulster Polytechnic, Ireland; or Twente University, The Netherlands; or Eindhobern University, The Netherlands, or U. of Leeds, UK; or U. of Cincinnati, USA; or Northeastern U., USA; Community College St Andrew's New Brunswick/Thames Valley University, London England or the Highbury College, London, England U. of Victoria. BC/Swinburne Institute of Technology, Ballarat U., Australia; or Institut des Services appliqués Rennes, France; or Fancholshschule Korlsruke, Germany; or Hogeschool West Brabant, The Netherlands; or University of Surrey, UK; or U. of Philadelphia Drexel, USA; or Moscow State University, Russia U. of Ottawa, Ont./École U. d'ingénieurs de	18–30 years of age	employer specific	12 months maximum

COUNTRY	*NAME OF PROGRAM*	*ELIGIBILITY*	*TYPE OF WORK PERMIT*	*DURATION*
Multilateral Exchange	Sheridan College, Ont./Berussakademie, Ge Ryerson Polytechnical Inst., Ont./Teesside Polytechnic, UK Camosun College, BC/Technical U. of Ostrava, Czechoslovakia Georgian College, Ont./ Glasgow College of Food Technology, UK; or Scula Internazionale di Science Turistiche, Italy Queens University, Ont./U. of Karisauke, Germany SirSandford Fleming, Ont./Berussaka-demie, Germany/Chuo College, Japan McMaster University, Ont./U. of Compiegne, France	18–30 years of age	employer specific	12 months maximum
New Zealand	Student Work Abroad Program (SWAP)	18–30 years of age	open *	6 months maximum
New Zealand	Working Holiday Program (WHP)	18–30 years of age	open *	12 months maximum
Poland	Student Work Abroad Program (SWAP)	18–30 years of age	open *	4 months from 1 June to 31 October
Republic of Belarus	Mouvement Québécois des Chantiers/Belarussian Association of International Youth Work (ATM)	18–25 years of age	employer specific	1 month maximum
Russia	Mouvement Québécois des Chantiers/Youth Voluntary Service	18–30 years of age	employer specific	1 month maximum
Slovakia	Mouvement Québécois des Chantiers/INEX – Slovakia (Assn. for Int. Youth Exchange & tourism	18–30 years of age	employer specific	1 month maximum

COUNTRY	*NAME OF PROGRAM*	*ELIGIBILITY*	*TYPE OF WORK PERMIT*	*DURATION*
South Africa	Student Work Program Abroad	18–30 years of age	open*	6 months; enrolled fulltime in post secondary studies; have medical insurance; have return ticket/ticket to 3rd country & $1,000
Spain	Mouvement Québécois des Chantiers/Institut Catala de Serveis a la Joventut	18–30 years of age	employer specific	1 month maximum
Sweden	Working Holiday Program (WHP)	18–30 years of age	employer specific	6 months maximum
Sweden	University of Alberta/Swedish University of Agricultural Sciences	18–30 years of age	employer specific	4 months from May to September
Switzerland	Canada–Switzerland Young Trainee Exchange Program	18–30 years of age	employer specific in field of study	18 months maximum
The Netherlands	Canada–Netherlands Young Workers Exchange Program	18–30 years of age	employer specific in field of study	12 months maximum
The Netherlands	Working Holiday Program (WHP)	18–30 years of age	employer specific in field of study	6 months maximum
The Netherlands	Student Work Abroad Program (SWAP)	18–30 years of age	employer specific	6 months maximum
United Kingdom	Working Holiday Program (WHP)	18–29 years of age	employer specific	6–12 months maximum
United Kingdom	Student Work Abroad Program (SWAP–BUNAC)	18–29 years of age full–time or part–time student or graduates of the year	open *	12 months maximum
United Kingdom	The Gap Activity Projects Limited	18–30 years of age	employer specific	12 months maximum
United Kingdom	Mouvement Québécois des Chantiers/United Nations Association Wales (UNA Wales, IVS)	18–25 years of age	employer specific	1 month maximum

COUNTRY	*NAME OF PROGRAM*	*ELIGIBILITY*	*TYPE OF WORK PERMIT*	*DURATION*
United States	Student Work Abroad Program (SWAP)	18–30 years of age	open *	6 months maximum from 1 May to end of October
United States	Cooks and Chefs Apprentice Exchange Program	18–30 years of age	employer specific	12 months maximum
United States	Mouvement Québécois des Chantiers/Council of International Educational Exhange (CIEE)	18–30 years of age	employer specific	1 month maximum

APPENDIX D

EXEMPTIONS FROM REQUIREMENT TO APPLY ABROAD

For precise legal interpretation, please refer to noted Regulations or section 1.2 of this chapter.

AUTHORIZATION NOT REQUIRED BEFORE ARRIVING AT POE R15(2) Section 1.2.6	*APPLICATION TO BE PROCESSED AT POE R15(3) Section 1.2.6*	*PERSONS WHO MAY APPLY FROM WITHIN CANADA R16 Section 1.2.7*	*EXEMPT FROM AUTHORIZATION R14.2 and R14.3 Section 3.1.3*
Dependants of members of military personnel stationed in Canada from a country described at APPENDIX G.	Nationals of the United States	Dependants of members of military personnel	Dependants of diplomats
Dependants of members of clergy who are performing religious duties in Canada	Persons who have been lawfully admitted to the U.S. for permanent residence	Dependants of members of clergy who are performing religious duties in Canada	Visitors attending short–term language courses of three–month's duration or less.
Dependants of media personnel who are covering Canadian events	Residents of Greenland	Dependants of media personnel who are covering Canadian events	Persons who intend to enrol in courses of studies that are not academic, professional or vocational in nature.
Dependants of athletes and coaches who are employed with Canadian based teams or working as referees and umpires;	Residents of St–Pierre & Miquelon	Dependants of persons coming to Canada to engage in athletic or other sport activities or events	Pre–school children who attend day care centres or nursery schools.
Dependants of persons in possession of a valid and subsisting student authorization		Dependants of persons in possession of a valid and subsisting student authorization	Visitors who have bought tour packages which include a study content, such as elderhostel programs.
Dependants of persons in possession of a valid employment authorization		Dependants of persons in possession of a valid employment authorization	

AUTHORIZATION NOT REQUIRED BEFORE ARRIVING AT POE R15(2) Section 1.2.6	*APPLICATION TO BE PROCESSED AT POE R15(3) Section 1.2.6*	*PERSONS WHO MAY APPLY FROM WITHIN CANADA R16 Section 1.2.7*	*EXEMPT FROM AUTHORIZATION R14.2 and R14.3 Section 3.1.3*
Dependants of representatives of foreign governments sent by that government to take up duties with a federal or provincial agency under an exchange agreement with Canada;		Dependants of representatives of foreign governments working under an exchange agreement with the Canadian or a provincial government.	
Nationals of the United States		Persons whose application for a student authorization has been approved by a visa officer but to whom the authorization has not been issued	
Persons who have been lawfully admitted to the United States for permanent residence		Persons whose course of study is incidental and secondary to the main purpose of their presence in Canada	
Residents of Greenland		Persons who have been authorized to remain in Canada as visitors and were in possession of a valid student authorization at the time they ceased to be visitors.	
Residents of St–Pierre & Miquelon		Persons whose refugee claims have been referred to the Refugee Division for decision and their dependants.	
Persons whose application for a student authorization has been approved in writing by a visa officer but to whom the authorization has not been issued		Persons who apply for student authorizations to take courses which are incidental or secondary to their main purpose for being in Canada.	
		Persons in possession of a permit issued by the Minister under section 37 of the Act or their dependants.	

APPENDIX E

LIST OF COUNTRIES WHERE MEDICALS ARE NOT REQUIRED

(see section 3.4.2)

This Appendix lists only those countries where medicals are not required. For full list of Medical Requirements and Details by Country, see IR 3.

Aldernay
Andorra
Australia
Austria
Bahamas
Belgium
Bermuda
Brechou
Cambodia
Crozet Arch
Denmark
Fiji
Finland
France
Germany
Gibraltar
Great Britain
Greenland
Guernsey
Holy See
Iceland
Ireland
Island Christmas
Island Lord Howe
Island Niue
Island Norfolk
Island Pitcairn
Islands Balearic
Islands Channel
Islands Cocos
Islands Cook
Islands Falkland
Islands Faroe
Islands Orkney
Islands Tokelau
Isle of Man
Israel
Italy
Japan
Jersey
Liechtenstein
Luxembourg
Malta
Monaco
Netherlands
New Zealand
Northern Ireland
Norway
Romania
San Marino
Sark
Saudi Arabia
Scotland
Spain
St–Pierre et Miquelon
Sweden
Switzerland
Terre Australes & Antartiques
United States of America
Vatican City State
Venda
Wales

APPENDIX F

PROVINCIAL HEALTH INSURANCE PLANS ELIGIBILITY OF FOREIGN STUDENTS AND DEPENDANTS

(see section 3.4.3)

PROVINCE	*ELIGIBILITY OF APPLICANT*		*DEP*
British Columbia	Yes	First day of 3rd month, if student authorization is valid for 6 or more months. Not retroactive. Coverage for period of student authorization. Medical insurance premiums are levied.	Yes
Northwest Territories	Yes	Date of entry with full–time student authorization.	Yes
Yukon	No	Private insurance plans are available.	No
Ontario	No	Private insurance plans are available.	No
Manitoba	No	Private insurance plans are available.	No
Saskatchewan	Yes	Immediate. For duration of full–time student authorization for school in Saskatchewan. For health services in Saskatchewan only.	Yes
Alberta	Yes	With full–time student authorization and with the intention of residing in Alberta for 12 consecutive months. Coverage is date of entry if registered within 3 months. If not registered within 3 months, effective date will be assigned. Health insurance premiums are levied.	Yes
Newfoundland	No	Private insurance plans are available.	No
P.E.I.	No	Private insurance plans are available.	No
Nova Scotia	Yes	First day of 13th month. No retroactive coverage. For health services in Nova Scotia only. May not be absent for more than 31 days during the waiting period. Must have full–time student authorization for 12 months or more. Private insurance plans are available for 12 month waiting period.	Yes
New Brunswick	No	Private insurance plans are available	No
Québec	No	Except students who are in receipt of a bursary from the Government of Québec, or students from countries that have an agreement with Québec. Students from France, Portugal, Sweden, Finland, Luxembourg, Denmark, and Norway are eligible with proper documentation. In the case of all students, Québec will not issue a CAQ unless they show adequate coverage.	No

APPENDIX G

COUNTRIES DESIGNATED FOR THE PURPOSE OF THE *VISITING FORCES ACT*

In accordance with Regulation 15(2) of the *Immigration Act*

"A person who seeks to come into Canada for a purpose referred to in paragraph 10(a) or (b) of the Act is not required to obtain a student authorization before that person appears at a port of entry if that person is a dependant of

(b) a member of the armed forces of a country that is a designated state for the purposes of the Visiting Forces Act who is coming to or is in Canada in order to carry out his official duties, including a person who has been designated as a civilian component of that visiting force;"

Antigua and Barduba
Australia
Bangladesh, People's Republic of
Barbados
Belgium
Belize
Benin
Botswana, Republic of
Brunei
Cameroon
Czech Republic
Denmark
El Salvador
Estonia
Ethiopia
France
Germany, Federal Republic
Ghana
Greece
Guyana
Hungary
Iceland
Italy
Ivory Coast, Republic of
Jamaica
Japan
Kenya
Korea, South
Kuwait, State of
Latvia
Lithuania
Luxembourg
Malawi
Malaysia
Nepal, Kingdom of
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman, Sultanate of
Poland
Portugal
Romania
Sierra Leone, Republic of
Slovakia
Swaziland
Tanzania
Thailand
Trinidad and Tobago
Turkey
Uganda
Ukraine
United Arab Emirates

United Kingdom Great Britain & Northern Ireland

United States

Venezuela

Zambia

Zimbabwe, Republic of

APPENDIX H

SAMPLE OF FORM IMM 1294 B – APPLICATION FOR A STUDENT AUTHORIZATION

Citizenship and Immigration Canada / Citoyenneté et Immigration Canada

PROTECTED WHEN COMPLETED / PROTÉGÉ UNE FOIS REMPLI • B

APPLICATION FOR A STUDENT AUTHORIZATION
DEMANDE D'AUTORISATION D'ÉTUDE

File - Référence

1 APPLICANT(S) REQUÉRANT(S)	PRINCIPAL APPLICANT REQUÉRANT PRINCIPAL	SPOUSE AND CHILDREN ACCOMPANYING PRINCIPAL APPLICANT CONJOINT ET ENFANTS ACCOMPAGNANT LE REQUÉRANT PRINCIPAL		
Family name Nom de famille				
First name Prénom				
Second name Autre prénom				
Relationship Lien de parenté	SELF LUI-MÊME			
Sex Sexe				
Date of birth Date de naissance				
Place of birth Lieu de naissance				
Citizenship Citoyenneté				
Passport no. N° de passeport				
Passport expiry date Date d'expiration du passeport				
Country of issue Pays de délivrance				
Marital status État matrimonial				

2 Current mailing address of principal applicant
Adresse postale actuelle du requérant principal

Telephone number / Numéro de téléphone ▶

3 Permanent address / Adresse permanente ☐ Same as in box 2 or / Comme à la case 2 ou

4 Present occupation of principal applicant
Profession actuelle du requérant principal

5 Name and address of present employer or school of principal applicant
Nom et adresse de l'employeur actuel ou de l'établissement d'enseignement du requérant principal

6 a) Immigration status of applicant(s) in country where applying
Statut par rapport à l'immigration du (des) requérant(s) dans le pays où la demande est présentée

b) Valid until
Valide jusqu'au

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Cost recovery code
Code de recouvrement des coûts

Fee Droit	Receipt no. N° du reçu
Final Decision - Décision finale	
Visa issued ☐ / Visa délivré ☐ Refused / Refusé ☐	Valid until Valide jusqu'au

Officer - Agent

IMM 1294 (05-97) B

Canada

APPENDIX I

SAMPLE OF FORM IMM 1249 E – APPLICATION TO CHANGE TERMS AND CONDITIONS OR EXTEND MY STAY IN CANADA

Citizenship and Immigration Canada / Citoyenneté et Immigration Canada

PROTECTED WHEN COMPLETED - B

PAGE 1 OF 8

APPLICATION TO CHANGE TERMS AND CONDITIONS OR EXTEND MY STAY IN CANADA

(NOTE: This form can be used to request/apply for more than one of the below for yourself or your family members - use space provided in Part B.)

I AM APPLYING FOR: ▶ "A" ☐ Extension of Visitor / Tourist Status "B" ☐ Student Authorization or Extension "C" ☐ Employment Authorization or Extension "D" ☐ Extension of Minister's Permit

NOTE: The required fee accompanying this application does not guarantee its acceptance.

For official use only
Client ID Number

A - PERSONAL INFORMATION

1 Surname (Family name) | Given name(s)

Other name(s) used | Sex ☐ Male ☐ Female

Date of birth D M Y | Place of birth (City, state/province and country)

Citizenship | Passport number | Expiry date | Country of last permanent residence ☐ Since birth ☐ Since 19__

MARITAL STATUS ▶ ☐ Never married ☐ Married ▶ If you are married, is your spouse Canadian citizen or permanent resident? ☐ Yes ☐ No ☐ Widowed ☐ Separated ☐ Divorced

Complete residential address in Canada | Complete mailing address in Canada (if different from residential address)

No. and street | Apt./Unit | No. and street | Apt./Unit

City/Town | Province | Postal code | City/Town | Province | Postal code

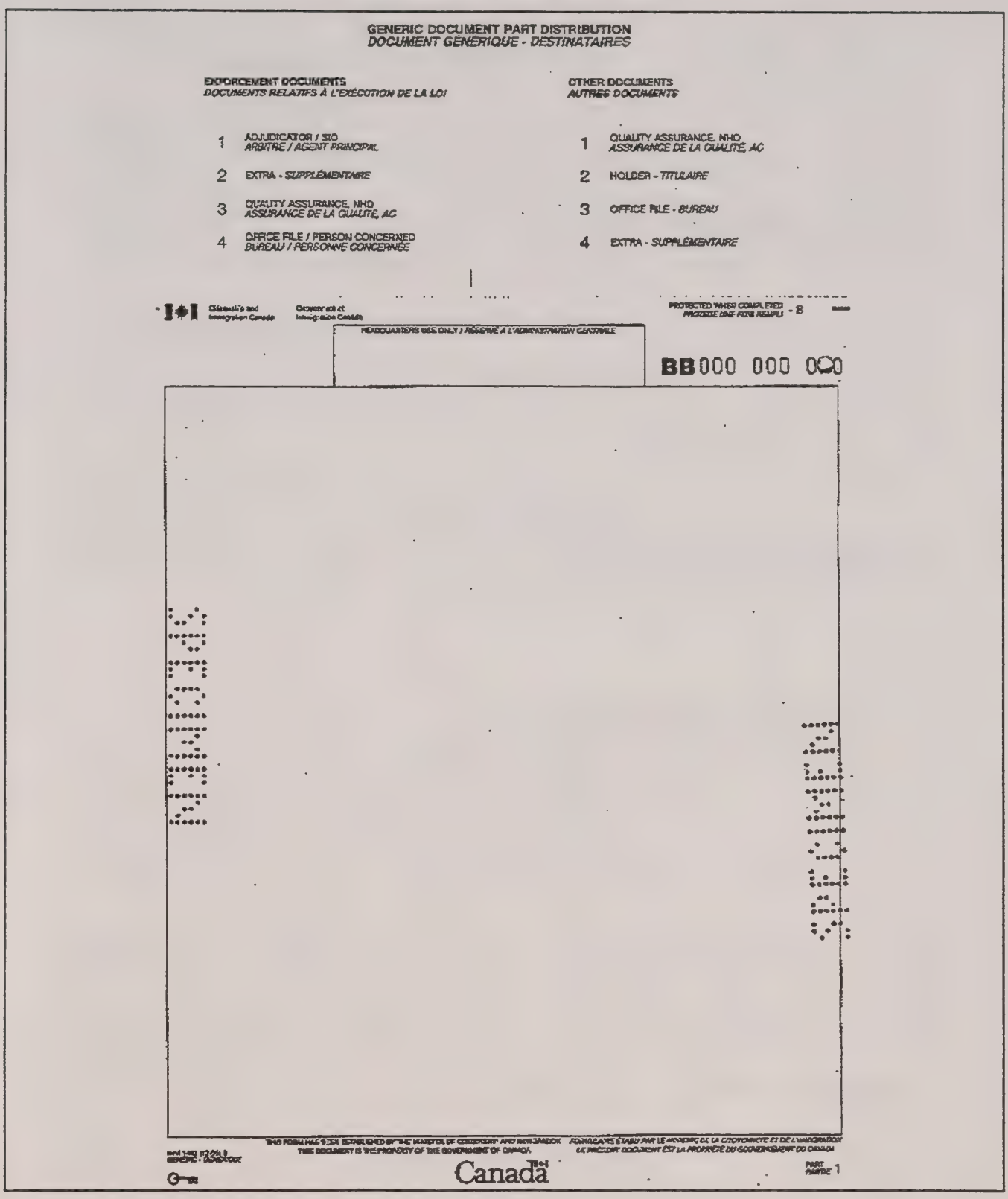
Home telephone number: Area code | Telephone number in Canada for messages: Area code

B - MY FAMILY MEMBERS IN CANADA

2 Surname (Family name)	Given name(s)					Relationship
Date of birth D M Y	Country of birth	Citizenship	Passport number	Expiry date	Type(s) of document requested ☐ A ☐ B ☐ C ☐ D ☐ None	
3 Surname (Family name)	Given name(s)					Relationship
Date of birth D M Y	Country of birth	Citizenship	Passport number	Expiry date	Type(s) of document requested ☐ A ☐ B ☐ C ☐ D ☐ None	
4 Surname (Family name)	Given name(s)					Relationship
Date of birth D M Y	Country of birth	Citizenship	Passport number	Expiry date	Type(s) of document requested ☐ A ☐ B ☐ C ☐ D ☐ None	
5 Surname (Family name)	Given name(s)					Relationship
Date of birth D M Y	Country of birth	Citizenship	Passport number	Expiry date	Type(s) of document requested ☐ A ☐ B ☐ C ☐ D ☐ None	
6 Surname (Family name)	Given name(s)					Relationship
Date of birth D M Y	Country of birth	Citizenship	Passport number	Expiry date	Type(s) of document requested ☐ A ☐ B ☐ C ☐ D ☐ None	

IMM 1249 (12-95) E (DISPONIBLE EN FRANÇAIS - IMM 1249 F) Canada

APPENDIX J
SAMPLE OF FORM IMM 1442 B – FOSS FULL DOCUMENT ENTRY – GENERIC



GENERIC DOCUMENT PART DISTRIBUTION
DOCUMENT GÉNÉRIQUE - DESTINATAIRES

EXPORCEMENT DOCUMENTS
DOCUMENTS RELATIFS À L'EXÉCUTION DE LA LOI

1 ADJUDICATOR / SIO
ARBITRE / AGENT PRINCIPAL

2 EXTRA - *SUPPLÉMENTAIRE*

3 QUALITY ASSURANCE, NHQ
ASSURANCE DE LA QUALITÉ, AC

4 OFFICE FILE / PERSON CONCERNED
BUREAU / PERSONNE CONCERNÉE

OTHER DOCUMENTS
AUTRES DOCUMENTS

1 QUALITY ASSURANCE, NHQ
ASSURANCE DE LA QUALITÉ, AC

2 HOLDER - *TITULAIRE*

3 OFFICE FILE - *BUREAU*

4 EXTRA - *SUPPLÉMENTAIRE*

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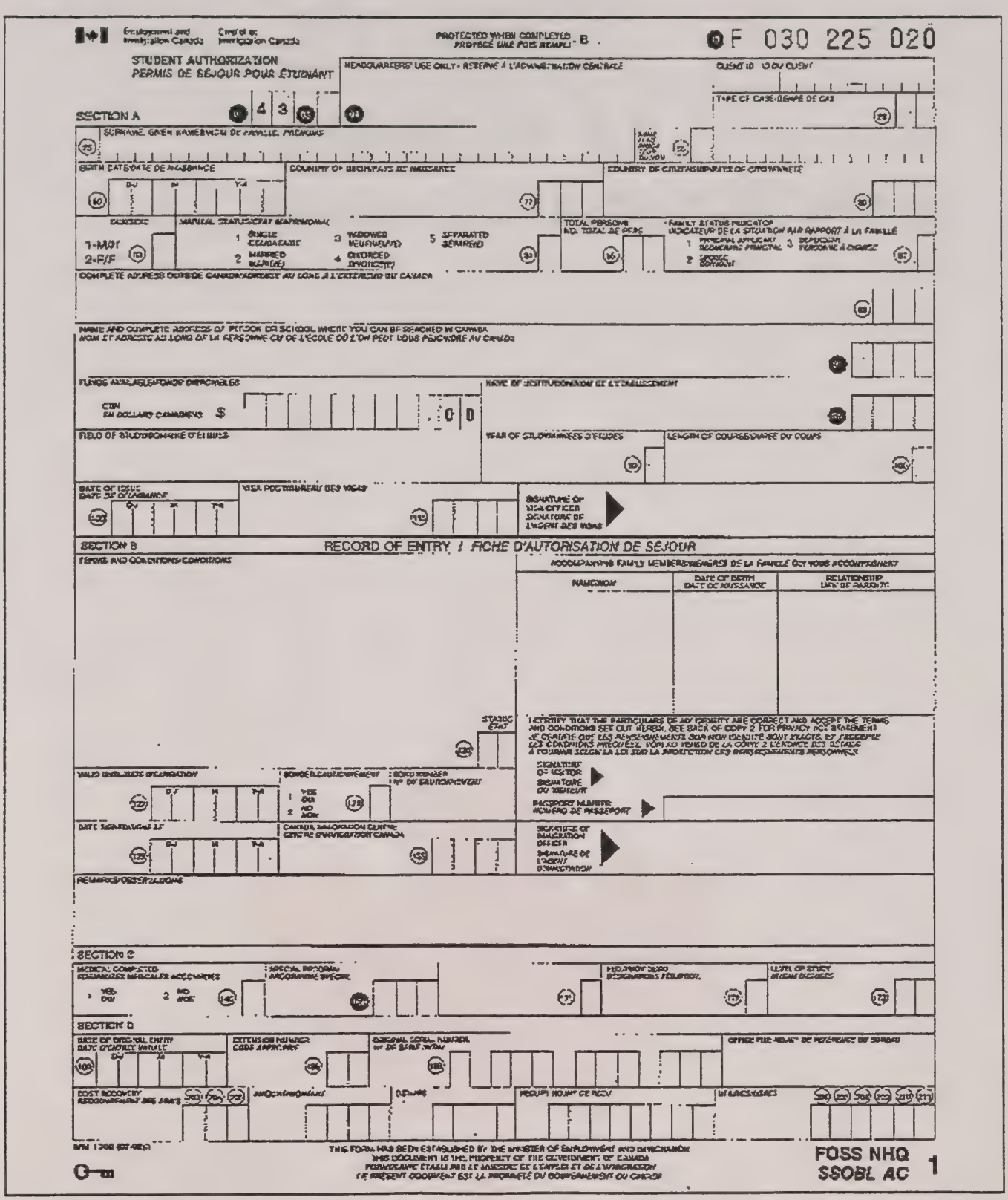
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Canada

PART / *PARTIE* 1

APPENDIX K

SAMPLE OF FORM IMM 1208 B – STUDENT AUTHORIZATION



IMMIGRATION

Canada

Chapter IP 11
Criminal Rehabilitation





Citizenship and Immigration Canada

Citoyenneté et Immigration Canada

Criminal Rehabilitation



Citizenship and Immigration Canada

Citoyenneté et Immigration Canada

Criminal Rehabilitation

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1. INTRODUCTION

1.1 What this chapter is about

This chapter describes the processing of requests for approval of rehabilitation to the Minister or delegated authority, under A19(1)(c.1) or A19(2)(a.1) of the *Immigration Act*.

1.2 Legislative intent

In order to be considered for admission to Canada, the *Immigration Act* requires persons, who are inadmissible because of criminal acts committed outside of Canada, to demonstrate to the satisfaction of the Minister or delegated authority that they are rehabilitated.

1.3 What is rehabilitation approval?

Rehabilitation approval is the authority from the Minister or delegated authority to overcome the inadmissibility of persons who have committed or have been convicted outside of Canada of criminal acts. Before granting rehabilitation the Minister or delegated authority, as the case may be, must be convinced that it is extremely unlikely that the person concerned will be involved in any further unlawful activities.

Persons who have been convicted of or committed an offence in Canada must obtain a pardon under the *Criminal Records Act* to overcome inadmissibility (see section 3.2).

1.4 Rehabilitation Process–Roles and Responsibilities

Visa office and Canada Immigration Centre

Ensures that each recommendation to the Minister contains sufficient information to enable an informed decision by the Minister or delegated authority and outlines the key factors for the recommendation.

National Headquarters

Supports the field by providing interpretation of legal issues and providing functional, operational and technical guidance to ensure recommendations are supportable.

Ensures consistency and high standards to facilitate the identification of relevant facts and the decision–making ability of the Minister or the delegate.

Scrutinizes, presents and explains cases to the Minister or the delegate.

2. INFORMATION FOR CLIENTS

2.1 Why provide information to clients?

Providing clients with information allows them to:

a) understand why they are inadmissible to Canada;

b) determine whether they are eligible to request approval of rehabilitation from the Minister or the delegate;

c) determine if they need to apply for a Pardon under the *Criminal Records Act* if they have been convicted in Canada;

d) accept the onus of proving they have re–established themselves as law abiding members of society;

e) determine the documentation they need to support their request for rehabilitation.

2.2 How to provide information to clients

The kit, *Applying for Criminal Rehabilitation* is sent to clients on request or when an officer feels providing a kit would be useful and appropriate to the circumstances. Examples of appropriate times to provide the kit would include when a visitor is reported under A20 at a Port of Entry, or when an immigrant or visitor is reported under A27 inland and the officer feels that a rehabilitation request is likely to be supported.

The kit provides clients with:

a) information to help them determine if they are criminally inadmissible;

b) information on how to overcome criminal inadmissibility;

c) an application for approval of rehabilitation and instructions on how to complete it, and

d) information on cost recovery fees.

3. REQUEST FOR APPROVAL OF REHABILITATION

3.1 Who may apply for approval of rehabilitation?

Persons seeking admission to Canada may apply for rehabilitation if:

- the criminal activity occurred outside Canada and falls within the provisions of A19(1)(c.1)(i), A19(1)(c.1)(ii), A19(2)(a.1)(i), or A19(2)(a.1)(ii), and
- the statutory five year waiting period has passed.

3.2 Who does not require rehabilitation approval?

Persons with offences in Canada who are described under A19(1)(c) or A19(2)(a) do not require rehabilitation approval by the Minister or delegate for rehabilitation. To overcome their inadmissibility, they must apply to the National Parole Board for a pardon under the *Criminal Records Act*.

To request a pardon application kit or additional information, clients can write to or call:

Clemency and Pardons Division
National Parole Board
340 Laurier Avenue West
Ottawa, Ontario K1A 0R1
Telephone: 1–800–874–2652 (callers in Canada and U.S.A. only)
FAX: (613) 995–4380

Note: *More information concerning the pardon procedure for offences committed in Canada may be found in APPENDIX A.*

Persons who are described in A19(2)(b) are not required to obtain rehabilitation approval as a pre–requisite to admission. Their inadmissibility is removed by the passing of the statutory five–year period. When immigration officers determine that clients have been convicted of two or more offences that would be considered summary convictions in Canada, and that the statutory five years has passed, they should issue the clients a letter indicating what criminal convictions the clients have advised us of and that the client is not described. An NCB note in FOSS will further facilitate future visits.

3.3 Who requires both Approval of Rehabilitation and a Pardon?

Persons who have committed or have been convicted of criminal acts occurring outside of Canada and who have also been convicted of one or more offences in Canada require both rehabilitation approval and a pardon under the *Criminal Records Act* to overcome their inadmissibility. Normally, a request for rehabilitation approval will not be made until the applicant has obtained a pardon to overcome the inadmissibility under paragraph A19(2)(a) or 19(1)(c). However, if the conviction in Canada was dealt by summary procedure, a request for rehabilitation approval may

be made if the applicant can provide evidence that an application to the National Parole Board for a pardon has been submitted. If, the conviction was by indictment, the applicant will be required to provide evidence that a pardon has been obtained before a request for rehabilitation approval will be made on his behalf.

3.4 How do clients apply for rehabilitation?

Clients apply by completing the *Application for Approval of Rehabilitation* IMM 1444. Applications may be mailed to Immigration offices in Canada by persons who are in Canada, or to Visa offices abroad for those applicants who are outside of Canada.

The application requires that applicants provide a written statement outlining the circumstances of their offence(s) and an account of all efforts they have made to re–establish themselves as law abiding members of society since the criminal activity occurred.

An algorithm describing the rehabilitation process is found at the end of this chapter.

3.5 Completion of the application

The *Application for Approval of Rehabilitation* (IMM 1444) has been developed to record all necessary information pertaining to a request for approval of rehabilitation. It is divided into three parts. Part A is completed by the client. Part B is completed by the immigration officer. Part C is completed by the Criminal Rehabilitation Unit, NHQ for specified 19(2)(a.1) cases and all 19(1)(c.1) cases.

Instructions for completing Part A of the form are contained in the client application kit. For assistance in completing Part B, see section 7.3 – *Rehabilitation Submission*.

3.6 Initial Screening of Application

When an application is received, it should be screened to determine if:

a) the correct cost recovery fee is included;

b) Part A of *Application for Approval of Rehabilitation* is fully completed, and

c) there is enough supporting documentation to enable an officer to determine if an applicant is likely to be approved for rehabilitation.

3.7 Mandatory Supporting Documentation

All applications for approval of rehabilitation require:

a) **Criminal clearance certificates** obtained from the appropriate authorities in the areas where the applicant has resided for the past ten years;

Clients who have resided in the United States of America must also obtain a police record from the Federal Bureau of Investigations.

Note: *Refer to IC 1 for addresses of country police authorities.*

b) **Conviction certificates for all convictions**

Acceptable proof may be original or certified true copies of each court judgement against the client such as a certificate of conviction or a police report. This information must be sufficient to establish the

nature of the offence. If the conviction certificate does not include enough information, then court records or transcripts should be obtained.

Note: Where officers are satisfied that clients have, to the best of their ability, tried to obtain conviction certificates, but cannot, statutory declarations from clients may be satisfactory. Each statutory declaration must describe the offence(s) in as much detail as possible and explain why the applicant was unable to obtain a conviction certificate.

c) **Applicant's personal written statement,** translated into French or English, fully detailing circumstances of the offence. If there is no conviction for the offence the written statement must contain sufficient information to establish the nature of the offence.

Normally, the written statement will be found in question 10 on the applicants' section of the *Application for Approval of Rehabilitation* form IMM 1444.

d) **RCMP in–Canada criminal clearance certificate** (mandatory for in–Canada cases only).

3.8 Non–mandatory Documentation

Visa or immigration officers may wish to obtain other documentation from clients, or other sources, in order to determine if a favourable recommendation should be made. Documentation could include:

a) Rehabilitation letters (character references), Court records and transcripts.

b) Probation or parole officer's reports.

c) Pardons which do not annul convictions retroactively.

d) File notes if the applicant has dealt with another visa office or CIC.

e) Court Records and transcript which may in some cases be essential to determine on what grounds the subject is inadmissible.

f) Copy of the foreign statute translated to English or French. Visa officers should only request a copy from the applicant if they do not have a copy of the statute at the Visa post.

Applicants in Canada should be directed to their Embassy if they are having difficulty obtaining a foreign statute. If this is not possible, or inappropriate (e.g. a refugee), the immigration officer in Canada will telex the visa office for assistance in obtaining this information.

Note: Applicants can obtain foreign statutes from the law libraries, court houses, lawyers or the local police force and from their embassy or consulate.

g) Any other documentation officers deem appropriate to facilitate decision making.

3.9 Incomplete Applications

Do not forward incomplete applications to the Rehabilitation Unit at National Headquarters. The applicant should be informed that the application cannot be processed until all documents and information are received.

4. COST RECOVERY

Section 16 of The *Immigration Act Fees Regulations* requires that the fee prescribed in section 15 of the schedule be paid on application and that a receipt be issued.

4.1 Fee Exemptions

There are no exemptions from the payment of this fee.

4.2 Forms of Payment

CICs and Visa offices should ensure that up–to–date information pertaining to the cost recovery fee and acceptable methods of payment is included in the kit *Applying for Criminal Rehabilitation* before the kit is sent to a client.

A record or receipt, according to The *Financial Administration Act*, will be issued when the application is received.

4.3 Problems with Fee Payment

If the fee is incorrect, request the correct fee and explain that the request for rehabilitation is suspended until the full fee is paid.

HELP: *For more information on cost recovery issues, see IR 5.*

5. DETERMINING CRIMINAL INADMISSIBILITY

5.1 Equating the Foreign Offence to a Canadian Federal Statute

The key to determining criminal inadmissibility is in accurately equating the foreign offence to a Canadian federal statute.

a) A19(1)(c.1)(i) and A19(2)(a.1)(i) "Equivalency" can be determined:

- by comparing the precise wording in each statute with a view to determining the essential elements of the respective offences;
- by examining the evidence to ascertain whether or not it is sufficient to establish that the essential ingredients of the offence as described in Canada have been proven in the foreign proceedings;
- by determining that the law of a foreign country coincides with Canadian statute law except where the offence falls within an offence referred to as malum in se, (that is, an offence which is of such a character as to be an offence in all countries, such as murder or theft).

No equivalency exists when the foreign offence is wider and the particulars of the offence committed would not bring the offence within the description of the Canadian offence ie. the client did not do what would render him/her culpable in Canadian law. (For example see APPENDIX B – Brannson)

b) A19(1)(c.1)(ii) and A19(2)(a.1)(ii) "Reasonable grounds" cannot be based on suspicion alone; The officer:

- must be able to satisfy a third party such as a court or an adjudicator that there are indeed reasonable grounds to support the conclusion;
- must have regard to the totality of the circumstances, including the following three points: is the information upon which the belief is based specific? credible? reliable?

Note: *See Section 11. – References for a description of A19(1)(c.1) and A19(2)(a.1).*

Note: *Refer to APPENDIX B for more information on equivalency and inadmissibility.*

5.2 Offences committed outside of Canada by Young Offenders

a) When an applicant has been treated as a young offender under foreign law, and no conviction has been recorded, the applicant is not criminally inadmissible to Canada .

b) When the applicant was convicted in an adult court in a country which has a special procedure for young offenders, the immigration officer should disregard the age of the applicant and treat the conviction in the regular manner.

c) Subject to d) or e) below, where a foreign conviction is registered in an adult court, the foreign jurisdiction having no system for young offenders, or, in a foreign court for young offenders where the disposition rendered has not yet ceased to have effect, the young offender will be considered to have been convicted.

d) When the applicant has committed an offence for which, in Canada, he could not be transferred to adult court (see section 553 of the Criminal Code), such young offender may be considered not to have been convicted for immigration purposes.

e) When the young offender has committed an offence for which in Canada, he would not have been dealt with in adult court (see factors for transfer to be considered set out in s.s.16(2) of the YOA), such young offender may be considered not to have been convicted.

f) In case of doubt, a legal opinion should be requested.

Note: Section 553 of the Criminal Code and s.s. 16(2) of the YOA are in APPENDIX C.

5.3 Pardons outside of Canada

The granting of a pardon in another country does not necessarily render the person admissible to Canada. Officers must take several factors into consideration before reaching a conclusion as to whether a person who has been granted a pardon is admissible or not.

In 1991 the Federal Court of Appeal stated in Burgon that Immigration should accept pardons that are granted in courts where the laws and the legal system allowing the pardon are substantively similar in purpose, process and result to ours, unless we have serious cause not to do so.

To determine if a foreign pardon should be recognized, the following steps should be applied to persons who have been granted foreign pardons:

- Determine whether the person is primafacie inadmissible under either A19(1)(c.1) or A19(2)(a.1).
- Decide whether the foreign country's legal system is based on similar foundations and shares similar values with Canada.
- For countries with legislation similar to Canada's, examine the foreign legislation to determine whether the pardon recognizes that the conviction will be said never to have happened (and has effectively been expunged) or whether the pardon recognizes that rehabilitation has taken place. Where it is merely a matter of rehabilitation, the person concerned is inadmissible under the *Immigration Act*.

6. RECOMMENDING REHABILITATION

Rehabilitation means only that the risk of further criminal activity is assessed to be improbable. Applicants may be considered rehabilitated when they demonstrate that they have been leading a stable lifestyle with no further criminal involvement.

6.1 Determining Eligibility

Review the application to ensure that:

a) the applicant is inadmissible to Canada under the provisions of A19(1)(c.1), or A19(2)(a.1), and

b) five years or more have passed since the expiration of the sentence imposed, or since the act or omission was committed.

6.2 Calculating the five year Rehabilitation period

In the case of a conviction, the five year waiting period begins at the end of the sentence imposed. The date at which an applicant is eligible to request relief is calculated as follows:

- **Suspended sentence:** the rehabilitation period will start on the date of the conviction.
- **Suspended sentence with Fine:** the rehabilitation period starts on the date the fine was paid. If date of payment is unknown officers may use date of sentencing.
- **Imprisonment but the sentence is suspended:** the rehabilitation starts at the end of the term of imprisonment which was suspended. Take the example of a person convicted of assault causing bodily harm, where the judge imposes a sentence of one month, but suspends the execution of the sentence for five years. In this case, the Rehabilitation period would start one month after sentencing and the client would be eligible for approval of rehabilitation five years and one month after sentencing.
- **Parole:** the rehabilitation period starts on the date parole ended.
- **Probation:** not considered as part of sentencing or conviction, and should, even if there are terms and conditions such as community service or enrolment in a drug rehabilitation program, not be used in determining whether the five–year period has elapsed. The period of rehabilitation starts on the date of sentencing.
- **Suspension or probation longer than five years:** if the applicant is still under the authority of the court, the Minister or the delegate can refuse to give authority for rehabilitation until the applicant has complied with the terms of the suspended sentence or probation.
- **Suspended Drivers License:** where the suspension of drivers licence has been imposed by the court, the period of suspension is included as part of the sentence.
- **Imprisonment without subsequent parole:** where the rehabilitation period begins immediately after the term of imprisonment has been completed.

Eligible applicants will be assessed in accordance with the guidelines in section 7.

Applicants who are not eligible for rehabilitation will be informed in writing and advised of any further action to be taken. See APPENDIX E for sample letters.

Officers, who feel the issuance of a Minister's permit may be appropriate, should refer to chapter IP 12/OP 19, *Minister's Permits*.

7. DETERMINING REHABILITATION

A number of factors must be taken into account in assessing whether a person has been rehabilitated.

Rehabilitation may be demonstrated by the passage of time and through an examination of the person's activities and lifestyle pre and post offence. Rehabilitation does not mean that there is no risk of further criminal activity, only that the risk is assessed to be unlikely. The person's reason for wanting to come to Canada is not a consideration for rehabilitation but is an important factor when determining whether to facilitate the application.

7.1 Type of offence

a) Minor offences

Applicants convicted of a single minor offence may have little difficulty in convincing the visa/immigration officer of their rehabilitation. Normally the offence is isolated, out of character and not indicative of criminal behaviour. In some of these cases an interview may not be required.

b) More serious offences or multiple offences

Applications with more serious or multiple offences require closer scrutiny. Normally, an interview will be required. Offences may involve:

- a pattern of repeated offences that suggest a criminal lifestyle;
- the use of weapons or explosives;
- violence or hostage taking;
- sexual assault;
- history of substance or alcohol abuse;
- use of force;
- assault;
- possession and trafficking of narcotics;
- fraud.

7.2 Rehabilitation considerations and evaluating risk

Rehabilitation considerations must be assessed to determine the likelihood or risk of the applicant's continued involvement in unlawful activities. These include:

- acceptance of responsibility for the offence;
- evidence of remorse for any harm done;
- evidence of restitution, where possible, to victims of their crimes.
- persons whose criminal involvement included, or was the result of, drug or alcohol abuse, sexual abuse, psychological disturbance, or a history of assaults, often require counselling or therapy in order to achieve rehabilitation;

- evidence of successful completion of a rehabilitation program is considered, as well as any evidence of a change in lifestyle;
- evidence of stability in employment and family life. Applicants who have been involved in a criminal lifestyle often exhibit instability in their lives. Participation in educational and skill training programs, steady employment and a positive family life may be indicative of a change in lifestyle.

Note: For additional guidance, officers may wish to consult APPENDIX D for rehabilitation considerations related to various types of persons who have had a criminal history.

Assessing the Information – Role of Officer in Determining Facts of Case

In most cases officers will need to interview the client to obtain missing information, clarify information already provided, and clarify questions of credibility.

Officers, when speaking with clients should be clear about why they are calling or conducting the interview i.e. that the officer is trying to determine if the client is rehabilitated and how great the chance of recidivism is. Officers should give the applicant an opportunity to respond to any concerns the officer may have concerning his case.

If third party information that **is not confidential** exists on file of which the client is unaware and the officer intends to rely upon it in rendering his/her decision, then the officer is obliged to inform the applicant and to provide an opportunity for the client to respond.

If third party information which **is confidential** exists on the file of which the client is unaware and the officer intends to rely upon it in rendering a decision, officers must exercise discretion. Consider speaking to the applicant without releasing the source of the information or seek advice from Legal Services.

In cases of inconsistencies or contradictions applicants must be given an opportunity to address them. A telephone call can be a means of letting a client clear up ambiguities or clarify information.

If the client presents documentation or makes statements which the officer feels are not accurate, the officer should attempt to verify if the facts, as they have been presented, are in fact true. Although the onus is on the applicant to provide the officer with documentation, in cases where the officer feels there may be misrepresentation, the officer should conduct an independent investigation into the circumstances of the offence. This may involve contacting the police in the area where the applicant committed the crime and attaining police reports, if the client has not already submitted them, or obtaining the judge's remarks on conviction or sentencing.

7.3 Rehabilitation submission

Submit all 19(1)(c.1) and non delegated 19(2)(a.1) offences recommendations to NHQ on *Application for Approval of Rehabilitation* form IMM 1444. A completed IMM 1444 must include the following:

- offence and sentence (where a fine was imposed the amount of the foreign currency must be converted into current Canadian dollars);
- place of occurrence;
- circumstances leading up to the commission of the offence;

- motives for the offence;
- how the offence was perpetrated? (who, what, where, when and how);
- the degree of violence involved, including the use of weapons;
- the degree of harm done to the victim (physical and psychological). The impact on the victim may be evident from the nature of the offence or from court records;
- the part the offender played in the offence;
- the level of cooperation of the applicant with the authorities following the arrest;
- the applicant's acceptance of responsibility for the offence, and any evidence of remorse or contrition;
- whether the applicant's version is consistent with the official version (brief comment will be included in submission if there are major discrepancies);
- a recommendation from the immigration officer.

If available and considered useful, the following information should also be submitted:

- whether the offence has received extensive publicity;
- the sentencing judge's comments including recommendations regarding parole.

Supporting Documentation

- **proof of the conviction, act or omission** where: This information must be sufficient to establish the nature of the offence. If the conviction certificate does not include enough information, then court records or transcripts should be obtained.
- **Statutory Declaration:** If a conviction certificate was not obtained, a statutory declaration from the applicant describing the offence(s) in detail and an explanation why no proof of conviction is not available.
- **criminal clearance certificate** obtained from the police authorities in the areas where the applicant has resided for the past ten years, and
- **Canadian criminal clearance certificate** for all persons who have resided in Canada.
- **F.B.I. certificate** for applicants who have resided in the U.S.A.
- **Documentary evidence as proof of rehabilitation** is left to the discretion of individual officers. The type of documentation will depend on the nature and severity of the crime committed, and the length of time that has elapsed since the offence, act or omission was committed. It could include, probation or parole reports, certificates of rehabilitation, letters of recommendation from public officials or respected private citizens. Where a letter of reference is provided it need not specifically refer to the offence. Usually the facts of the case speak for themselves offsetting the need for any specific evidence of rehabilitation.

7.4 Recommendation

The onus is on applicants to demonstrate that they have successfully overcome any past difficulties which brought them into conflict with the law. The degree of risk presented by the applicant's presence in Canada can be assessed on the basis of the factors outlined in section 7.3.

Officers should consider after reflection, what are the chances of these applicants entering or remaining in Canada without committing further offences. What are their chances of successful resettlement without committing a further offence? Is criminal activity likely to reoccur?

Applicants must demonstrate clearly that rehabilitation has taken place. Officers should not hesitate to refuse to recommend a rehabilitation request when the applicant is unable or unwilling to demonstrate that there is a low risk of recidivism. Officers should not submit a rehabilitation request when the applicant is unable or unwilling to demonstrate that there is a low risk of recidivism.

7.5 Where to send the submission

a) **Instrument I–53 delegations**

By way of Instrument I–53, the Minister has delegated the authority to grant or refuse 19(2)(a.1) rehabilitation requests to Managers of Canada Immigration Centres, Program Managers at Missions Abroad and to the Director of the CPC's in Canada. See Instrument I–53 (IL 3) for a full list of authorized positions.

The delegation is limited at the present by the following criteria:

- applicant is described in either A19(2)(a) or (a.1) only and in no other criminally inadmissible class; and
- applicant has no more than two convictions; or
- applicant has committed no more than one act or omission – e.g., A19(2)(a.1)(ii); and
- applicant did not use violence, a weapon or cause serious property damage or injury to anyone while committing the offence(s), act or omission.

b) **Submissions originating in Canada**

Rehabilitation requests may be sent directly to NHQ. Boxes 15 to 20 of the IMM 1444 are completed by the reviewing officer. Where reviewing officials concur that rehabilitation has taken place, the original and one copy are forwarded to the Director, Case Research and Review Directorate, Case Management Branch, NHQ, Attention: Rehabilitation Unit. Based on the officer's report, the rehabilitation unit reviews the request and prepares a recommendation for the Minister as the case may be, and simultaneously, will inform the originating office in writing of the action taken.

c) **Submissions originating outside Canada**

The original and one copy of all submissions originating outside Canada, recommending rehabilitation, are sent directly to the Director, Case Research and Review Directorate, Case Management, Branch, NHQ Attention: Rehabilitation Unit. Boxes 15 to 20 are completed by the officer in charge at the visa post.

d) **Dissenting opinions**

i) Where there is a difference of opinion between the officer and the reviewing officer, the application and one copy will be forwarded to the Rehabilitation Unit at NHQ to adjudicate. The application will be reviewed and a decision on whether a recommendation if made to the Minister is supportable. If a positive recommendation cannot be made, the case will be referred to the Minister for concurrence of the refusal and then returned to the originating office.

ii) Officers will refer, in compliance with local instructions, all A19(1)(a.1) requests for approval to the reviewing officer.

8. COMMUNICATING THE DECISION

8.1 Decision of the Minister

The decision of the cases referred to the Minister or delegate is recorded in Part C of the IMM 1444 (07–94) or part D of IMM 1444 (04–87) and returned to the originating office by NHQ.

8.2 Positive decision

Officers will inform applicants in writing and provide instructions on how to proceed with their immigrant/visitor applications.

8.3 Negative decision

Clients who have not met the rehabilitation requirements will be notified in writing. In some cases an interview may be necessary to explain subsequent enforcement action.

9. REPORTING

9.1 Reporting approved and refused requests and those not submitted for approval

a) In–Canada requests

Record all requests for rehabilitation originating in Canada in the WIP (Work in Process) module of FOSS. Later, show whether the application was approved or refused, and the decision date.

b) Request at a visa office

Requests originating overseas are not recorded on FOSS at this time. In order to alert the Port of Entry that rehabilitation has been approved on behalf of a person who is not an immigrant (e.g. who is a temporary worker) provide the person with a letter listing the criminal conviction(s) and that rehabilitation has been approved. See sample letters in APPENDIX E.

10. FEEDBACK

10.1 Responding to representations

The *Privacy Act* requires that information concerning clients must be released only to the client or the client's designated representative. Prior to responding to a representation, be sure that clients or their representative verify their identity. This applies if the representation is made in person, by mail, or by telephone.

Information can also be given out if the client has given us written permission to do so.

11. REFERENCES

A19(1)(c.1)(i) applies when there are reasonable grounds to believe that persons have been convicted outside Canada of an offence that, if committed in Canada, may be punishable under any Act of Parliament by a maximum term of imprisonment of 10 years or more. Exceptions are possible for those who are eligible and qualify for rehabilitation. The Minister approves rehabilitation under this section.

A19(1)c.1)(ii) applies when there are reasonable grounds to believe that persons have committed outside Canada an act or omission that constitutes an offence under the laws where it occurred and that, if committed in Canada, may be punishable under any Act of Parliament by a maximum term of imprisonment of 10 years or more. Exceptions are possible for those who satisfy the requirement of the rehabilitation process.

A19(2)a.1)(i) applies when there are reasonable grounds to believe that persons have been convicted outside Canada of an offence that, if committed in Canada, could be punishable by way of indictment under any Act of Parliament by a maximum term of imprisonment of less that 10 years, except those who have complied with the rehabilitation process. Approval has been delegated (see section 7.5).

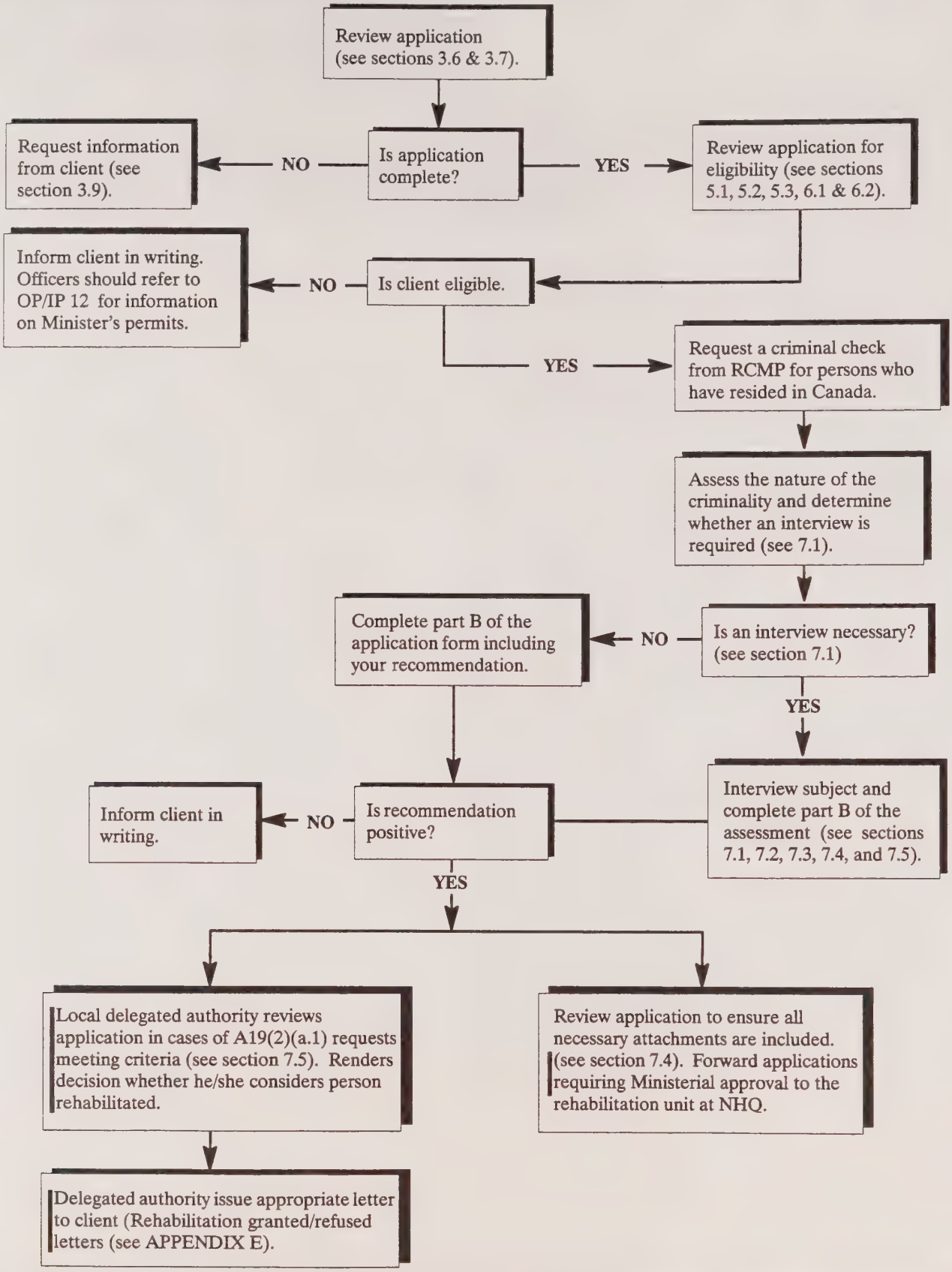
A19(2)(a.1)(ii) applies when there are reasonable grounds to believe that persons have committed outside Canada an act or omission which constitutes an offence under the laws where it occurred and that, if committed in Canada, may be punishable by way of indictment under any Act of Parliament by a maximum term of imprisonment of less than 10 years, except those who have complied with the rehabilitation process. The Minister approves non–delegated rehabilitation under this section. Some approval has been delegated (see section 7.5).

A19(2)(b)(i) applies to persons convicted in Canada under any Act of Parliament of two or more summary offence not arising from a single occurrence where any part of the sentences imposed was served/to be served at any time during the five–year period immediately preceding the day on which the person seeks admission. (Note: A portion of two or more of the sentences imposed must fall within the five–year period). The inadmissibility is overcome once the five–year period has elapsed.

A19(2)(b)(ii) applies when there are reasonable grounds to believe that persons have been convicted outside Canada of two or more offence not arising from a single occurrence that, if committed in Canada, would be punishable on summary conviction under any Act of Parliament, subject to five–year limitation as in 19(2)(b)(i).

Note: *In A19(1)(c.1), A19(2)(a.1), A19(1)(c), A19(2)(a), or A19(2(b)(ii) cases it is recommended that the opinion of the Rehabilitation Unit (CRPO) at NHQ be sought when officers are not fully confident a refusal is in order, or when it appears the refusal will be controversial.*

12. CRIMINAL REHABILITATION ALGORITHM



APPENDIX A

PARDONS FOR CONVICTIONS IN CANADA

(see section 3.2 – *Who does not require rehabilitation approval?*)

Persons who have obtained criminal convictions in Canada can no longer apply for rehabilitation. Rather, to overcome inadmissibility, they are to apply to the National Parole Board for a pardon. Section 3 of the *Criminal Records Act* provides that a person who has been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament may apply to the National Parole Board for a pardon of that offence.

Before an application for a pardon may be considered, the following period must have elapsed after the expiration according to law of any sentence, including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for an offence:

- five years, in the case of an offence prosecuted by indictment, or a service offence within the meaning of the *National Defence Act* [*Criminal Records Act*, subsection 4(a)]
- three years, in the case of an offence punishable on summary conviction, or a service offence within the meaning of the *National Defence Act*, other than a service offence referred to in paragraph 4(a)(ii) of the *Criminal Records Act*.

For an offence prosecuted by indictment, the National Parole Board may grant a pardon if it is satisfied that the applicant, during the period of five years, has been of good conduct and has not been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament.

For an offence punishable on summary conviction, a pardon shall be issued if the offender has not been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament during the period of three years.

Under section 5 of the *Criminal Records Act*, a pardon:

> is evidence of the fact that the Board, after making proper inquiries, was satisfied that the applicant for the pardon was of good behaviour and that the conviction in respect of which the pardon is granted or issued should no longer reflect adversely on the applicant's character; and, unless the pardon is subsequently revoked or ceases to have effect, vacates the conviction in respect of which it is granted and, without restricting the generality of the foregoing, removes any disqualification to which the person so convicted is, by reason of the conviction, subject by virtue of the provisions of any Act of Parliament, or a regulation made thereunder.

Pardon application kits or additional information can be obtained from:

Clemency and Pardon Division
National Parole Board
340 Laurier Avenue West
Ottawa, Ontario
K1A 0R1
Tel.: 613–954–2033

APPENDIX B
CRIMINAL EQUIVALENCIES AND PARDONS

(see section 5.1 – *Equating the Foreign Offence to a Canadian Federal Statute*)

1. CRIMINAL EQUIVALENCES

The documentary evidence in your case may involve your examining details of a conviction obtained abroad to establish its equivalence to Canadian law. The Federal Court has prescribed methods for determining equivalence in three leading cases, discussed in the following sections.

1.1 *Brannson*

The adjudicator ordered Mr. Brannson's removal because he was a person described in A27(2)(a) in that, if he were applying for entry to Canada, he would not have been granted entry by reason of his being a member of an inadmissible class of persons described in A19(2)(a). In *Brannson* [Appendix A, case 5], the court set the deportation order aside and referred the matter back to an adjudicator for the resumption of the inquiry.

Mr. Brannson was reported for having been convicted in the United States of mail fraud. The adjudicator found that the offence of which he was convicted, as revealed by the terms of the judgement and the probation commitment order, would have been an offence under s. 339 of the *Criminal Code* had it been committed in Canada. The court disagreed with the adjudicator's finding because the Canadian offence relates to mailing letters and circulars, whereas the U.S. offence is broader and refers to mailing any matter or thing. In other words, someone could not be convicted of the Canadian offence in question if the materials transmitted or delivered were neither letters or circulars. No evidence was introduced at the inquiry as to what Mr. Brannson had mailed, although he did provide some information as to the circumstances of the offence.

The court decided that these documents should have been introduced in evidence:

- evidence of conviction (this may take the form of a certificate of conviction, a police report, or a report of a telephone conversation with the police or a court reporter)
- the legal description of the foreign offence (the text of the statutory provision under which the person was convicted), and
- evidence of the particulars of the offence, such as the charge, indictment, or similar document. In some cases, the certificate of conviction may contain sufficient information for the certificate to be used instead of the indictment.

The court laid out the following process:

- You should examine the certificate of conviction or a similar document to determine the offence for which the person was convicted. A certificate of conviction is particularly important if the person concerned was charged with one offence and convicted of another. This will usually occur where a person is charged with a serious offence but, as a result of plea bargaining, is convicted of a lesser offence. The offence that you must look at is the one of which the person concerned was actually convicted. In this case, the certificate of conviction showed that Mr. Brannson was convicted of an offence under 18 U.S.C. 1341.
- You should study the provisions describing the foreign offence to determine its essential elements. Merely looking at the name of the offence is not sufficient.
- Having determined the elements of the foreign offence, you should examine the relevant provisions in our legislation to see whether there is an equivalent offence. The essential elements of each offence must be compared to determine that they correspond. Although the elements of the foreign and Canadian offences need not be strictly identical, the elements of the Canadian offence have to be such as to include within them the elements of the foreign offence. If, for example, a foreign offence were narrower than a Canadian offence, the wider Canadian offence would, nonetheless, be equivalent to the foreign offence. The court realized that there will be differences in the wording of statutory provisions in different countries and, in seeking to determine the Canadian equivalent, you must bear in mind that the language of the two provisions need not be the same.

- If the foreign offence is broader than the Canadian offence, you must examine the indictment or a similar document to determine whether the particulars of the offence fall within the Canadian offence. If the particulars narrow the offence committed in such a manner as to bring it within the legal definition of the Canadian offence in question, then there is an equivalence. If the circumstances are such that the foreign offence committed falls outside the legal description of the Canadian offence one is looking at, the two sections should not be equivalent. One should then look elsewhere to see if there is an equivalent.

In the *Brannson* case, the sequence should have been:

- determine that the foreign offence included mailing any matter, whereas the Canadian one referred to the mailing of letters and circulars only
- see if what was mailed fell within the Canadian offence, and
- if the material mailed was a letter, then there would be an equivalency.

The court mentioned two possible exceptions to the requirement of producing evidence of relevant foreign law, conviction and charge:

- where the conviction is with respect to an offence that is *malum in se* (that is, an offence against moral law which is of such a character as to be an offence in all countries, such as murder or theft). In such cases, you would presume the law in the foreign country to be the same as in Canada. However, you should rely on this exception only in the clearest of cases. For example, manslaughter appears to be a *malum in se* offence, but in some American jurisdictions manslaughter has little resemblance to manslaughter as we understand it in Canada. A well–informed counsel could therefore catch you off guard.
- in non–common law countries, the methods whereby prosecutions are instituted may be substantially different from those generally prevailing in common law countries. Therefore, where the foreign conviction was in a non–common law jurisdiction, there might not be any document equivalent to an indictment. If such documents are not available, you should introduce evidence to that effect. If the case is then appealed to the Federal Court, the court will understand why the Commission relied on the testimony of the person concerned. It is important to establish the fact of unavailability, since the testimony of the person concerned could be somewhat less reliable than the documents in issue. The same would apply to the unavailability of police records and similar documents, for whatever reason.

1.2 *Anderson*

Mr. Anderson was reported on the grounds that he was a person described in A27(2)(a), in that if he were applying for entry, he would not be granted entry by reason of his being a member of an inadmissible class described in A19(1)(c). The adjudicator, drawing a Canadian equivalent different from that alleged in the direction, found the person to be described in A27(2)(a) and A19(2)(a) and issued a departure notice. In other words, he found Mr. Anderson to be a member of an inadmissible class other than the inadmissible class specified in the A27 report and based his departure notice on that finding.

In *Anderson* [Appendix A, case 7] the court held that there can be no switching between the criminality provisions of A19 where the report alleges that the person is described in A27(2)(a). A person can only be found described on the basis of a ground contained in the report. In addition, the court found that the adjudicator was unable to determine the essential elements of the foreign offence on the basis of the information presented at the inquiry. It was, therefore, impossible for him to determine that the foreign offence would have been an offence punishable by way of indictment under the *Criminal Code*.

As a result of this decision, it is the Commission's position that:

- reports should refer to as many possible Canadian equivalents as are reasonably necessary, and
- if there is any doubt as to the possible Canadian equivalent, both A19(1)(c) and A19(2)(a) should be mentioned with A27(2)(a) in your report.

1.3 *Dayan*

Mr. Dayan was reported on the grounds that he was a person described in A27(2)(a), in that if he were applying for entry, he would not be granted entry by reason of his being a member of an inadmissible class described in A19(1)(c). After a review of the facts of the case the adjudicator ordered the subject deported.

The case was subsequently appealed to the Federal Court [Dayan; Appendix A, case 6]. Counsel for the appellant argued that the proper Canadian equivalent of the offence committed by his client had not been established at the inquiry. While the court supported the adjudicator, it took the opportunity to outline measures that will help to equate foreign offences with Canadian ones.

The court indicated that you should make every effort to obtain the text of the statutory provisions of the foreign law when attempting to establish the Canadian equivalent. You should introduce this text at the inquiry so that it will form part of the official record. The court recognized that not all nations codify their laws in a text of statutes similar to our own. The absence of a specific equivalent provision in the statute law of another country, when this is the case, should be reflected in the record of the inquiry.

1.4 Implications

Brannson, *Anderson* and *Dayan* affect inland inquiries in particular. You must bear in mind that to be successful at an inquiry involving a foreign conviction:

- you must obtain evidence of the conviction of the person concerned, the legal description of the foreign offence and particulars of the offence as usually evidenced by the charge or indictment in order to establish the Canadian equivalent of the foreign offence. These should all be introduced as exhibits at the inquiry, whether or not you think they are necessary in the particular case. If questions then arise as to the proper equivalent, any doubt will be resolved more effectively.
- depending on the facts of the case, it may be necessary for reports to be more general, considering:
  - the difficulty in determining a Canadian equivalent offence, and
  - the fact that the criminal equivalence determined at inquiry must fall within the allegation contained in the report.

Section 3 below gives a full list of leading cases dealing with criminal equivalence.

2. PARDONS AND REHABILITATION

2.1 Pardons for convictions in Canada

Persons who have obtained criminal convictions in Canada can no longer apply for rehabilitation. Rather, to overcome inadmissibility, they are to apply to the National Parole Board for a pardon. Section 3 of the *Criminal Records Act* provides that a person who has been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament may apply to the National Parole Board for a pardon of that offence.

Before an application for a pardon may be considered, the following period must have elapsed after the expiration according to law of any sentence, including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for an offence:

- five years, in the case of an offence prosecuted by indictment, or a service offence within the meaning of the *National Defence Act* [*Criminal Records Act*, subsection 4(a)]
- three years, in the case of an offence punishable on summary conviction, or a service offence within the meaning of the *National Defence Act*, other than a service offence referred to in paragraph 4(a)(ii) of the *Criminal Records Act*.

For an offence prosecuted by indictment, the National Parole Board may grant a pardon if it is satisfied that the applicant, during the period of five years, has been of good conduct and has not been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament.

For an offence punishable on summary conviction, a pardon shall be issued if the offender has not been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament during the period of three years.

Under section 5 of the *Criminal Records Act*, a pardon:

> is evidence of the fact that the Board, after making proper inquiries, was satisfied that the applicant for the pardon was of good behaviour and that the conviction in respect of which the pardon is granted or issued should no longer reflect adversely on the applicant's character; and, unless the pardon is subsequently revoked or ceases to have effect, vacates the conviction in respect of which it is granted and, without restricting the generality of the foregoing, removes any disqualification to which the person so convicted is, by reason of the conviction, subject by virtue of the provisions of any Act of Parliament, or a regulation made thereunder.

Pardon application kits or additional information can be obtained from:

Clemency and Pardon Division
National Parole Board
340 Laurier Avenue West
Ottawa, Ontario
K1A 0R1
Tel.: 613–954–2033

2.2 Pardons for convictions outside Canada

The granting of a pardon in another country does not necessarily render the person concerned admissible to Canada. You must take several factors into consideration before reaching a conclusion as to whether a person who has been granted a pardon is admissible or not. The Commission holds the position that if a pardon recognizes that the person should not have been convicted (that is, the person was convicted in error), effect will be given to the pardon. However, if the pardon was granted for rehabilitation purposes, then the Commission will not necessarily give effect to it.

In 1991, the Federal Court of Appeal stated in *Burgon* that we should accept pardons that are granted in courts where the laws and legal system allowing the pardon are substantively similar in purpose, process and result to ours, unless we have serious cause not to do so [*Burgon;* Appendix A, case 8]. Although countries that have legal systems based on common law generally would be considered similar to ours, you must examine the circumstances of each case carefully.

In *Burgon*, the court considered whether Ms. Burgon was refused an immigrant visa to Canada under A19(1)(c) because of having pleaded guilty on a charge of conspiring to supply controlled substances, for which she was sentenced to two years' probation, or whether she is saved from the operation of A19(1)(c) by s. 13(1) of the United Kingdom's *Powers of Criminal Courts Act, 1973*, which stipulates:

> A conviction of an offence for which an order is made under this Part of this Act placing the offender on probation discharging him absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the preceding provisions of this Act....

Policy relating to criminal records has changed in recent years to reflect altering social attitudes towards those persons who have acquired criminal convictions. The *Canadian Criminal Records Act* invoked in 1979 allows criminal records to be pardoned or erased in certain circumstances.

Similar provisions to assist those persons with criminal records in making a new start in life were enacted in the U.K. and other countries. In fact, the British allow offenders placed on probation to be deemed not to have a conviction. The *U.K. Rehabilitation of Offenders Act*, 1974 treats a probation order as a conviction for which a person may become rehabilitated and thus, the conviction to be considered a spent conviction. It was this provision that enabled Ms. Burgon to have her conviction expunged in the U.K. This legislation while not identical to that of Canada, is similar in content and effect.

The court ruled in *Burgon* that "we should recognize the laws of other countries which are based on similar foundations to ours, unless there is a solid rationale for departing therefrom". Thus a person who has become rehabilitated and whose conviction is spent under the U.K *Rehabilitation of Offenders Act, 1974* is generally not to be considered to have been convicted of an offence for the purposes of the administration of the *Immigration Act*, unless there is some valid basis for deciding otherwise.

Legal Services suggest that you apply the following steps as a general approach to persons who have been granted foreign pardons:

- Determine whether the person is *prima facie* inadmissible under either A19(1)(c.1) or A19(2)(a.1)(i).
- Decide whether the foreign country's legal system is based on similar foundations and shares similar values with Canada.
- Determine whether the person concerned falls within the exception by satisfying either the Governor in Council or the Minister, as the case may be, that they have rehabilitated themselves.
- For countries with legislation similar to Canada's, examine the foreign legislation to determine whether the pardon recognizes that the conviction will be said never to have happened (and has effectively been expunged) or whether the pardon recognizes that rehabilitation has taken place. Where it is merely a matter of rehabilitation, the person concerned is inadmissible under the *Immigration Act.*

For cases of this nature, you should contact the Inquiries Section, Case Presentation and Litigation at National Headquarters (tel.: 819–953–3747).

3. CASE LAW ON CRIMINAL EQUIVALENCIES

3.1 Adjudicator's jurisdiction

Kalacharan [Appendix A, case 29]

The Federal Court of Appeal granted a conditional discharge, which means a conviction is deemed never to have been registered. Thus the basis for making a deportation order under A27(2)(d) was deemed not to have existed.

Anderson [Appendix A, case 7]

To determine which Canadian offence is equivalent to the U.S. conviction, the adjudicator needs the precise wording of the U.S. offence so that the adjudicator can compare the essential elements of the offence. An order which is not based on proper evidence will be set aside.

Wilson [Appendix A, case 30]

The court outlined which sections of the *Criminal Code* relating to N.S.F. cheques fall under Al9(1)(c). The court determined that the equivalent of the offence did not fall under A19(1)(c).

Clarke [Appendix A, case 31]

The court indicated that the adjudicator is not bound to consider only the Canadian equivalent given in the report. The adjudicator may consider other Canadian equivalents if the appropriate equivalent leads to the person concerned being described in the paragraph of the *Immigration Act* cited in the report.

Steward No. 3 [Appendix A, case 32]

The court outlined three ways in which to determine equivalency.

Mohammad No. 1 [Appendix A, case 33]

The fact that the Governor in Council has not considered rehabilitation does not affect the adjudicator's jurisdiction. A27(1) requires that the immigration officer possess information that the person concerned is described in Al9(1)(c), and to know that the person concerned has not satisfied the Governor in Council as to his or her rehabilitation.

Mohammad No. 3 [Appendix A, case 34]

The officer need not wait for a decision by the Governor in Council on rehabilitation before writing the report.

3.2 Evidence required to prove equivalency

Brannson [Appendix A, case 5]

The court ruled that when the person concerned has been undoubtedly convicted, the validity of the conviction on the merits cannot be put in issue at inquiry. See also section 1.1 above.

Dayan [Appendix A, case 6]

The court noted that no evidence of the foreign statute was adduced at inquiry. The court outlined three ways in which equivalency may be determined. In this case, the actual facts which led to the convictions gave the adjudicator adequate evidence to support a finding under A19(1)(c). The court stated that proof of the foreign statute should have been made. Application of the concept of offences as *malum in se* to prove equivalency should only take place when proof of foreign law cannot be made and only when the foreign law is that of a non–common law country. See also section 1.3 above.

Anderson [Appendix A, case 7]

The court gave guidance on how to establish Canadian equivalents to foreign convictions. See also section 1.2 above.

Hill [Appendix A, case 35]

The court set aside a deportation order because essential evidence was not produced. This decision outlines a three–point method for establishing whether there is sufficient evidence to determine equivalency.

Mak [Appendix A, case 36]

The court upheld the adjudicator's decision that the applicant had been convicted of an offence which, if committed in Canada would have been the offence of attempted robbery prescribed by the *Criminal Code*. The circumstances leading to the conviction were introduced by testimonial evidence only.

Steward No. 3 [Appendix A, case 32]

The court reiterated the test to be conducted in order to establish equivalency. In this case, the foreign offence is broader than the Canadian offence. The court determined that equivalency had not been established.

3.3 Other case law

Robertson [Appendix A, case 37]

A19(1)(c) can only be used to deport a person when that person has been convicted of an offence for which the maximum punishment is ten years' imprisonment at the date of the deportation order.

Davis [Appendix A, case 38]

This decision outlines the relevance of taking into account the currency exchange rate to establish equivalency in the case of foreign conviction involving theft.

Arnow [Appendix A, case 39]

This case involves a conviction in absentia. The court stated that "a conviction is a conviction".

Kai Lee [Appendix A, case 40]

A person prosecuted and convicted in Canada by way of summary conviction is, for the purposes of the *Immigration Act*, convicted of a summary offence despite the fact that the offence could have proceeded by indictment.

Potter [Appendix A, case 41]

A person prosecuted and convicted abroad of a hybrid offence shall be deemed to have been convicted by indictment.

4. EXAMPLES OF DETERMINING EQUIVALENCE

4.1 United States *Internal Revenue Code*

Paragraph 7208(1) of 26 USC 1976 (the *Internal Revenue Code* of the United States) provides that "any person" who

> willfully makes and subscribes any return, statement, or other document which contains or is verified by a written declaration that is made under the penalties of perjury, and which he does not believe to be true and correct as to any material matter...

shall be guilty of a felony...

A corresponding Canadian provision might be paragraph 239(1)(a) of the *Income Tax Act*, which stipulates that

every person who has

(a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation...

is guilty of an offence...

You could analyze the elements of these two provisions for equivalence as follows:

Foreign provision	Canadian provision	Comments
any person who	every person who	Equivalent element
willfully makes and subscribes	made, or participated in, assented to or acquiesced in the making	The foreign offence states the element of intent ("wilfully"). While the Canadian offence does not specifically refer to intent, it would be argued that intention is clearly a required element of the Canadian offence. While the U.S. provision refers to making a return, the Canadian statute refers to making a *statement* in a return. It would be argued that both statutes attempt to control the making of false statements in returns, and while the language of the statutes may differ, their intent and operation are the same.
makes... any return	return... filed or made	Equivalent element

Foreign provision	Canadian provision	Comments
which contains or is verified	as required by or under this Act or a regulation	The Canadian offence may be wider in that it does not require the return to be verified by a written declaration made under penalties of perjury. The point is arguable, in that the Canadian statute contemplates that the return will be filed "as required by or under this Act or a regulation." Research of the Canadian statute may or may not reveal a Canadian compliance method equivalent to that contained in the U.S. statute. The argument here could be, first, that the two elements are equivalent on their face; second, that the adjudicator should find that the "narrower" U.S. element is included in the more broadly defined Canadian element and is therefore equivalent; and third, that if it is found that there is no equivalency on this element, it is irrelevant to the adjudicator's decision because the difference between the two elements is one of form, not a substance, and in any event, the element is not essential to the offence.

Foreign provision	Canadian provision	Comments
and which he does not believe	in the making of false or deceptive statements...	The Canadian offence, it might be argued, is more broadly defined than the U.S. offence, in that it contemplates the making of merely deceptive statements (which may well be true), as well as false statements. The U.S. statute refers to statements not believed to be true and correct. One could argue that these elements are equivalent and that in any event, the element of the narrower American offence is included within the more broadly defined Canadian offence.
by a written declaration that is made under the penalties of perjury... to be true and correct as to any material matter.		The U.S. statute refers to "any material matter," implying, perhaps, that untrue and incorrect statements might be permissible in a return if they were immaterial. Fortunately the Canadian statute, by omitting to include the concept of materiality, forces us to address the totality of the return as to false or deceptive statements, not just "material" matters. This, it could be argued, is a more broadly defined approach than that taken in the U.S. statute, and therefore the element of the U.S. statute is included in the Canadian element.

On the basis of this analysis, or similar arguments, you would submit to an adjudicator that the statute provisions are equivalent.

4.2 Hong Kong *Prevention of Bribery Ordinance*

Paragraph 9(1)(b) of the Hong Kong *Prevention of Bribery Ordinance* provides that:

> any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his...
>
> (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,
>
> shall be guilty of an offence

A corresponding Canadian provision might be s. 426(1) of the *Criminal Code*:

> Every one commits an offence who
>
> (a) corruptly...
>
> (ii) being an agent, demands, accepts or offers or agrees to accept from any person,
>
> a reward, advantage or benefit of any kind as consideration for doing or forbearing to do, or for having done or forborne to do, any act relating to the affairs or business of his principal or for showing or forbearing to show favour or disfavour to any person with relation to the affairs or business of his principal...

You could analyze the elements of these two provisions for equivalence as follows:

Foreign Provision	Canadian Provision	Comments
Any agent who	agent	Apparently equivalent
without lawful authority or reasonable excuse	corruptly	Apparently equivalent
solicits or accepts	demands, accepts, offers to or agrees to accept	Apparently equivalent
any advantage	reward, advantage or benefit of any kind	Apparently equivalent
as an inducement to or reward for or otherwise...	as consideration	Apparently equivalent
showing... favour... to any person	showing... favour to any person	Apparently equivalent
in relation to his principal's affairs or business	with relation to the affairs or business of his principal.	Apparently equivalent

It is certainly arguable that these two offences are equivalent. They seem to contain the same essential elements and would appear to have been enacted to achieve the same quality and degree of social regulation.

4.3 South Africa *Road Traffic Ordinance*

Subsection 135(1) of the South Africa *Road Traffic Ordinance* provides that:

> The driver of a vehicle on a public road at the time when such vehicle is involved in or contributes to any accident in which any other person is killed or injured or suffers damage in respect of any property or animal...
>
> (a) shall immediately stop the vehicle;
>
> (b) shall ascertain the nature and extent of any damage sustained.

Section 252 of the *Criminal Code* stipulates that:

> (1) Every one who has the care, charge or control of a vehicle, vessel or aircraft that is involved in an accident with
>
> (a) another person,
>
> (b) a vehicle, vessel or aircraft, or
>
> (c) in the case of a vehicle, cattle in the charge of a person,
>
> and with intent to escape civil or criminal liability, fails to stop his vehicle, vessel, or, where possible, his aircraft, give his name and address and, where any person has been injured or appears to require assistance, offer assistance, is guilty...
>
> (2) In proceedings under subsection (1), evidence that an accused failed to stop his vehicle, vessel, or where possible, his aircraft, as the case may be, offer assistance where any person has been injured or appears to require assistance, and give his name and address, is, in the absence of evidence to the contrary, proof of an intent to escape civil or criminal liability.

You could analyze the elements of these two provisions for equivalence as follows:

Foreign Provision	Canadian Provision	Comments
The driver of a vehicle on a public road	Everyone who has the care, charge or control of a vehicle	The Canadian element is more broadly defined. The argument could be made that a "driver" in the South African provision would be included in "Everyone who has the care, charge or control" in the Canadian provision. Note that the element of the Canadian offence does not require that the offence take place on a public road.
at the time when such vehicle is involved in or contributes to any accident	that is involved in an accident	These elements would appear to be equivalent.
in which any other person... suffers damage in respect of any property...		Note the manner in which "damage" is treated in the South African provision, which includes a penalty for failure to stop to ascertain damage. The Canadian offence provides a penalty for failure to stop with *intent* to escape civil or criminal liability.
shall immediately stop the vehicle	fails to stop his vehicle...	These elements are arguably equivalent although phrased differently.
	with intent to escape civil or criminal liability	Intention to escape civil or criminal liability is not an element of the South African offence. The onus in the South African offence is to stop to ascertain the nature and extent of damage.

It could be argued in this situation that the essential element of the Canadian provision – that is, the intention to escape civil or criminal liability – is not contained in the South African offence, which focuses on the obligation to stop to ascertain the nature and extent of any damage sustained. Thus, although the offences are similar in nature, they may not be found to be equivalent by the adjudicator.

APPENDIX C
YOUNG OFFENDERS

(see section 5.2 – *Offences committed outside of Canada by Young Offenders*)

CRIMINAL CODE

Jurisdiction of Provincial Court Judges

Absolute Jurisdiction

553 (Absolute jurisdiction) The jurisdiction of a provincial court judge to try an accused is absolute and does not depend on the consent of the accused where the accused is charged in an information

(a) with

(i) theft, other than theft of cattle,

(ii) obtaining money or property by false pretences,

(iii) unlawfully having in his possession any property or thing or any proceeds of any property or think knowing that all or a part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from the commission in Canada of an offence punishable by indictment or an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment,

(iv) having, by deceit, falsehood or other fraudulent means, defrauded the public or any person, whether ascertained or not, of any property, money or valuable security, or

(v) mischief under subsection 430(4), where the subject–matter of the offence does not exceed one thousand dollars;

(b) with counselling or with an attempt to commit or with an accessory after the fact to the commission of

(i) any offence referred to in paragraph (a) in respect of the subject – matter and value thereof referred to in that paragraph (c);

or

(c) with an offence under

(i) section 201 (keeping gaming or betting house),

(ii) section 202(betting, pool–selling, bookmaking, etc.)

(iii) section 203 (placing bets),

(iv) section 206(lotteries and games of chance),

(v) section 209 (cheating at play),

(vi) section 210 (keeping common bawdy–house)

*(vii) subsection 263(4) (driving while disqualified), OR

(viii) section 393 (fraud in relation to fares)

* The reference should have been made to section 259(4) . There is no paragraph (4) in section 263.

YOUNG OFFENDERS

YOUNG OFFENDERS ACT

16(2) (Consideration by youth court)

In considering an application under subsection (1) in respect of a young person, a youth court shall take into account

(a) the seriousness of the alleged offence and the circumstances in which it was allegedly committed;

(b) the age, maturity, character and background of the young person and any record or summary of previous findings of delinquency under the *Juvenile Delinquents Act*, chapter J–3 of the Revised Statutes of Canada, 1970, or previous findings of guilt under this Act or any other Act of Parliament or any regulation made thereunder;

(c) the adequacy of this Act, and the adequacy of the Criminal Code or other Act of Parliament that would apply in respect of the young person if an order were made under subsection (1), to meet the circumstances of the case;

(d) the availability of treatment or correctional resources;

(e) any representations made to the court by or on behalf of the young person or by the Attorney General or his agent; and

(f) any other factors that the court considers relevant.

APPENDIX D
CRIMINAL PROFILES

(see section 7.2 – *Rehabilitation considerations and evaluating risk*)

Note: Determine first of all whether the applicant is best described under Type 1, 2, 3, 4 or 5. Then, when assessing whether the applicant is rehabilitated, take into account the "rehabilitation factors" appropriate to each type.

Type 1

Description

Relatively stable lifestyle. Established in the community and minimal offence history. Offenses are generally motivated by an isolated event. Offenses may be viewed as a temporary lapse. Least likely to get involved in further criminal activity.

Rehabilitation Factors

- Understanding of the offence
- Responsibility taken for the offence/contrition
- No negative contact with the law

Type 2

Description

May be well established and have minimal offence history. Marked by any of the following characteristics:

sexual offence history;

drug or alcohol abuse;

serious emotional disturbance; or

assaultive offence history.

They often deny or minimize their problems. They often require counselling/therapy to attain rehabilitation.

Rehabilitation Factors

- Understanding of the offence
- Responsibility taken for the offence/contrition
- Drug/alcohol counselling
- Psychological counselling
- No negative contact with the law

Type 3

Description

They lack social and vocational skills. Intellectual deficits may also contribute to their problems. Criminal behaviour is usually a result of their inability to succeed and a strong tendency to be led by more sophisticated associates. They demonstrate little foresight about the consequences of their behaviour. There is a high element of impulsiveness in their behaviour. They tend not to learn from their mistakes. Rehabilitation is indicated by improved survival and social skills. They often require training/education to bring about change. A change in social setting is often necessary.

Rehabilitation Factors

- Understanding of the offence
- Responsibility taken for the offence/contrition
- Drug/alcohol counselling
- Education/employment/life–skills training
- New social groups
- Stable employment pattern
- Stable marriage/family life
- Stable living arrangements
- No negative contact with the law

Type 4

Description

They display a fair degree of comfort with a criminal life style. Demonstrate a pattern of long–term involvement with criminal activities. They are motivated by a need to prove their ability to manipulate people and "beat the system". Their crimes are generally motivated towards material gain. Guilt over criminal activities is generally superficial. They tend to deny or minimize any personal problems and assign the blame for criminal activity to others or to circumstances. Rehabilitation is difficult. They often require counselling/therapy. Rehabilitation is indicated by involvement in non–manipulative relationships and pro–social activities.

Rehabilitation Factors

- Understanding of the offence
- Responsibility taken for the offence/contrition
- Education/employment training
- New social groups
- Stable employment pattern
- Stable marriage/family life
- No negative contact with the law

Type 5

Description

Marked by numerous changes in residence, marital problems or an inability to provide consistent financial support. They show an instability in their employment, family life and living situation. They have a general lack of direction in their life. They often have habitual involvement in drugs and/or alcohol. They have serious emotional problems and negative self perceptions. They have a considerable number of arrests for summary offenses. Their inability to deal appropriately with personal problems usually prevents them from acquiring and maintaining steady employment. Rehabilitation is indicated by an increased stability in all areas of their life. They often require substance–abuse counselling.

Rehabilitation Factors

- Understanding of the offence
- Responsibility taken for the offence/contrition
- Drug/alcohol counselling
- Education/employment/life–skill training
- New social groups
- Stable employment pattern
- Stable marriage/family life
- Stable living arrangements
- Psychological counselling
- No negative contact with the law

APPENDIX E
REHABILITATION REFUSAL LETTERS

Rehabilitation Refusal Letter #1

To be used when Visa/Immigration officers are not prepared to submit a favourable recommendation to Minister.

Dear Client,

I am writing in response to your request for approval of rehabilitation to overcome a prohibition pursuant to paragraphs 19( )( ) of the *Immigration Act*.

The Minister has established procedural guidelines on the type of cases he is prepared to approve.

I have reviewed your application in the light of these guidelines and it is not a case I am prepared to submit to the Minister.

I regret that our response could not be more favourable.

Yours Sincerely,

Immigration/Visa officer

Rehabilitation Refusal Letter #2

To be used when Visa/Immigration officers are not prepared to submit a favourable recommendation to Minister because the five year rehabilitation period has not been met in A19(1)(c.1)(i) and A19(2)(a.1)(i) cases (convicted outside of Canada).

Dear Client,

I am writing in response to your request for approval of rehabilitation to overcome a prohibition pursuant to paragraphs 19( )( ) of the *Immigration Act*.

To submit your application with a favourable recommendation to the _____, you must provide evidence that you have met the statutory five year waiting period from the termination of the sentence imposed by the courts. In your case, we calculate that you will be eligible for consideration of rehabilitation on MONTH/DAY/YEAR.

I am sorry our response could not be more favourable.

Yours Sincerely,

Immigration/Visa officer

Rehabilitation Refusal Letter #3

To be used when Visa/Immigration officers are not prepared to submit a favourable recommendation to the Minister because the the five year rehabilitation period has not been met in A19(1)(c.1)(ii) and A19(2)(a.1)(ii) cases.

Dear Client,

I am writing in response to your request for approval of rehabilitation to overcome a prohibition pursuant to paragraphs 19( )( ) of the *Immigration Act*.

To submit your application with a favourable recommendation to the _____, you must provide evidence that you have met the statutory five year waiting period from the date you committed the offence. In your case we calculate that you will be eligible for consideration of rehabilitation on MONTH/DAY/YEAR.

I am sorry our response could not be more favourable.

Yours Sincerely,

Immigration/Visa officer

Rehabilitation Refusal Letter #4

To be used when Minister's delegated authority grants rehabilitation in A19(2)(a.1)(i) cases.

Dear Client,

This refers to your application for approval of rehabilitation.

I have approved your application. You are no longer described in A19(2)(a.1)(i) because of your conviction(s) for the offence(s) of [specify offence(s)] in (name of country) on [specify date(s)].

Please note that approval of this application for rehabilitation does not exempt you from any other requirements of the *Immigration Act* or the *Immigration Regulations*.

Yours Sincerely,

_____
(Signature of delegated authority)
Name of delegated authority
Title

Rehabilitation Refusal Letter #5

To be used when Minister's delegated authority grants rehabilitation in A19(2)(a.1)(ii) cases.

Dear Client,

This refers to your application for approval of rehabilitation.

I have approved your application. You are no longer described in A19(2)(a.1)(ii) because you committed the act or omission of (specify act or omission) in (name of country) on [specify date(s)].

Please note that approval of this application for rehabilitation does not exempt you from any other requirements of the *Immigration Act* or the *Immigration Regulations*.

Yours Sincerely,

_____
(Signature of delegated authority)
Name of delegated authority
Title

Rehabilitation Refusal Letter #6

To be used when Minister's delegated authority does not approve rehabilitation in A19(2)(a.1) cases.

Dear Client,

This refers to your application for approval of rehabilitation under A19(2)(a.1).

Under Instrument I–53, I have the delegated authority to exercise the authority of the Minister of Citizenship and Immigration under A19(2)(a.1) to determine whether criminally inadmissible persons therein described have rehabilitated.

I have reviewed your application dated _____ and I am not satisfied that you are rehabilitated.

Yours Sincerely,

_____
(Signature of delegated authority)
Name of delegated authority
Title

Citizenship and Immigration

Canada

Chapter IP 12

Minister's Permits



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1. INTRODUCTION

1.1 What is this chapter about?

This chapter provides policy and processing guidelines for issuing Minister's permits to eligible persons who qualify for and deserve favourable discretionary consideration.

1.2 What is a Minister's permit?

A Minister's permit is a document which allows inadmissible persons (A19), or persons reported or who may be reported under subsection 27(2) of the Act, to come into or remain in Canada. [A37(1)]

1.3 Policy intent and annual report to Parliament

Normally, persons who are inadmissible would be refused abroad or refused processing from within Canada. However, there will be cases where the visa or immigration officer determines that the need for the person to be in Canada is compelling enough to issue a Minister's permit. Immigration policy allows for Minister's permits to be issued to inadmissible persons (A19) or persons reported or who may be reported under A27(2) of the Immigration Act where:

a) there are compelling grounds to allow the person to enter and/or remain in Canada, keeping in mind the objectives of the Act; (A3)

b) the need for the person to come into or remain in Canada outweighs the risk of their presence in Canada; and

c) discretionary entry [A19(3)] or reinstatement of visitor status [A27(2.1)] are not appropriate alternatives.

> ***Note:*** *A Minister's permit is a document issued only in special circumstances. It can carry privileges greater than visitor status, therefore great care should be exercised in its issuance.*

A37(7) requires the Minister report to Parliament the number of permits issued annually. In this report the total number of permits issued is broken down by inadmissible class (Section A19) and paragraph of subsection A27(2).

This requirement to report exists because permits are exceptional. The Minister is accountable to Parliament for the use of this exceptional authority.

It is essential immigration and visa officers appreciate the importance of accountability when recommending or issuing a permit. As well their responsibility to recommend or issue permits only in accordance with the guidelines of this chapter, they are required to leave a record of their decision. Clear records of decisions allow monitoring and research necessary for preparation of the report to Parliament.

1.4 What is the status of a person on a permit?

Persons to whom Minister's permits have been issued are known simply as "permit holders".

1.5 Who is authorized to issue a Minister's permit?

To determine those to whom the Ministerial authority to issue permits has been delegated, refer to item 3 of CID-2 in Chapter IL 3. These persons are referred to as "Minister's delegates" in this chapter. (See APPENDIX A.)

1.6 How long may a permit be valid?

A permit may be valid for up to three years [A37(3)]. The actual duration chosen by the officer should be consistent with the needs of the individual and other circumstances of the case. In some cases the latter may outweigh the former (see section 3.9 below) and validity should be for less than three years. Otherwise, since extensions may involve

the payment of a fee for the client, as well as expenditure of departmental resources, the document should usually be made valid for as long as practicable.

The Rehabilitation Unit of the Case Research and Review Directorate will indicate the length of the validity where NHQ concurrence is required in cases of serious criminal inadmissibility.

1.7 Can a permit be extended or cancelled?

A permit may be extended or cancelled in writing at any time. [A37(4)]

Procedures for cancelling a permit are in section 8.3, Cancellation of a Minister's permit.

The Act contains an important default provision whereby a permit is deemed cancelled if the holder leaves Canada, **unless the document specifies otherwise**. [A37(4.1)]

Where a permit is cancelled or expires, the holder may be directed to leave Canada, or even ordered deported. [A37(5)]

2. ELIGIBILITY AND QUALIFICATION

2.1 Who is eligible? [A37(1)]

Any person who is inadmissible under A19 and is seeking to come into Canada or, being in Canada, is reported or reportable under A27(2) of the Immigration Act is eligible for a permit.

If possible, in visitor cases, reinstatement of visitor status should be considered prior to the issuance of a Minister's permit. Pursuant to A27(2.1) visitors who ceased to be visitors by reason of 26(1)(a) to (c): [(a) - fails to comply with a term/condition; (b) - attends school or works without authorization; and (c) - visitor overstay] may be allowed to remain in Canada as visitors.

2.2 Who is not eligible? [A37(2)]

a) A person under an unexecuted removal order, unless an appeal from that order has been allowed.

b) A person in Canada (member of the family class) with respect to whom an appeal under A77 has been dismissed.

Section 77 of the Immigration Act provides appeal rights to a family class sponsor where an immigration or visa officer has refused an application on the grounds: (1) that the person who sponsored the application does not meet the requirements of the regulations respecting persons who sponsor applications for landing; or (2) the family class applicant does not meet the requirements of the Immigration Act or Regulations.

2.3 When may a permit be issued?

A Minister's permit may be issued if there are **compelling** reasons to allow an inadmissible person or a person in violation of the Act to come into or remain in Canada and the **risk** to Canadians or Canadian society is minimal.

Officers must balance the **control** and **facilitation** objectives found in Section 3 of the Immigration Act when forming an opinion as to whether the client should be issued a Minister's permit (assessing Risk versus Need factors).

Primarily, the disposition of the case must recognize the **control** objectives:

- "to maintain and protect the health, safety and good order of Canadian society"; and
- "to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity." [A3(i) and (j)].

If the risk to Canadians and Canadian interest is minimal, (see sections 5.2, 6.2, 7.2), then the following **facilitation** objectives may be given priority over the control objectives:

- Canada's social and humanitarian commitments;
- Canada's economic and cultural interests; and
- Canada's international obligations respecting the protection of refugees and displaced persons. [A3(a) to (h).]

2.4 Minister's permit in A27(2) cases

A decision not to hold an inquiry following an A27(2) report does not prejudice a person's visitor status [except for 27(2)(b) and (e) because of ceasing to be a visitor]. Although A37(1)(b) provides the authority to issue a permit to a person who has been or may be reported pursuant to A27(2), the issuance of one is not mandatory if it is decided not to hold an inquiry. If an inquiry is not warranted, the person remains with current visitor status and can be granted an extension of visitor status because he/she

was not reported A27(2)(e) for A26. If circumstances change, officers can revive the original report (or make a new one) and recommend that an inquiry be held.

It is preferable that the extension to visitor status be granted instead of the Minister's permit as a permit will give the individual privileges not acquired through visitor status.

For tracking purposes, Minister's permits will continue to be issued in cases where RHQ or NHQ concurrence to issue a permit is required. (See section 3.5 Delegated Authorities and Role of RHQ and/or NHQ and APPENDIX A.)

3. PROCESSING PROSPECTIVE PERMIT CASES

3.1 Starting the process

When a client is applying at a visa office for a visitor visa, employment authorization, student authorization or immigrant visa; seeking entry or landing at a port of entry for entry; or applying at an inland office for a visa exemption or extension of status, the process begins when a visa or immigration officer detects inadmissibility or violation. The process may also be initiated when a client is aware of inadmissibility and requests a Minister's permit.

At Canadian ports of entry, the first step toward considering issuance of a permit is an A20 report. At inland offices, the first step for consideration is an A27 report or a narrative memorandum. The procedures related to the writing of A20 reports are contained in manual chapter PE 9.

At posts abroad, the first step in the process of considering permit issuance is usually an informal summary of factors in the case which have a mitigating effect on the reason(s) for simply refusing the application.

3.2 Interviews

Information may be obtained from and provided to the client as part of an interview for enforcement, admission, selection or counselling purposes. Informing a client about the permit option will not normally arise unless and until the client's inadmissibility or violation is established and the circumstances of the case are known.

Where the case involves a medical or technical (e.g., no passport) inadmissibility and the questions of credibility or merit are not at issue, an interview may not serve any useful purpose. Similarly, in cases involving **one or two** instances of **minor** criminality and where the statutory time limit (five years) has passed, an interview may not always be required in order to reach a reasonable decision with respect to whether or not a permit should be recommended. However, when a case involves serious grounds of inadmissibility or a violation which is flagrant or intentional, an interview is the only prudent and practical means of ascertaining the issues of credibility, merit, or risk in a case. For example, the issue of contrition usually arises when assessing potential risk in a case involving a criminal conviction. It would be difficult to assess a person's degree of contrition without the benefit of a personal interview.

3.3 Cost Recovery

The Immigration Act Fees Regulations guidelines stipulate: "A fee shall be collected each time a request for the processing of a Minister's permit has been received, unless an exemption has been identified."

The exemptions are listed in IR 5, APPENDIX A, ANNEX 8. Cost Recovery codes are listed in the IH manual, IR 5 and on the Help Screens on FOSS. These sources should be consulted directly, before applying or exempting a fee for any particular case.

A fee will be collected upon receipt of an application for a Minister's permit. In practical terms, when it is established that a permit is required to overcome an inadmissibility/ violation, it is necessary to determine if the client meets the basic criteria regarding qualification for a permit. Once it is determined that the client **may** meet the criteria for favourable discretion to be exercised, the case officer will commence formal processing and collect the applicable fee. The fee will not be refunded in cases where the permit is refused.

3.4 Summary of case and officer's recommendation

The officer should include the following information when presenting a case and making a recommendation for a permit:

a) information in support of the inadmissibility/violation;

b) A20 report (Port of Entry) or A27 report (inland) citing the specific inadmissibility/ violation; and

c) a narrative explanation or summary of the relevant facts, circumstances and recommendation in the case.

An officer's recommendation regarding permit issuance should state concisely:

a) the grounds on which it is based including any public policy, national interest, or compassionate and humanitarian considerations and in immigrant cases, brief comments on the applicant's chances of successful settlement in Canada, (education, work skills, employment history, family support, ability to pay for health care if ineligible for provincial public health insurance);

b) the duration for which the permit should be issued; and

c) whether the permit should be made valid for leaving and re-entering Canada.

In cases where the recommendation will be made to a local authority and not to RHQ or NHQ, the recommendation may be noted on the "For Official Use Only" portion. If the recommendation will be made to RHQ or NHQ, the summary and recommendation should be in the form of a memorandum, telex or facsimile.

Specific information regarding the summary of case and recommendation is included in section:

5.3 - for Medical Inadmissibility;
6.5 - for Criminal Inadmissibility;
7.5 - for Other Inadmissibilities.

3.5 Delegated authorities and role of RHQ and/or NHQ (see also APPENDIX A)

Instrument I-1 in IL 3 defines the delegation of the Minister's authorities under A37 (see APPENDIX A). Such delegation is authorized pursuant to Section 121 of the Immigration Act, which also specifies certain authorities ("powers, duties and functions") which may **not** be delegated.

By way of Instrument I-1, the Minister has delegated the authority to issue a Minister's permit to a criminally inadmissible IMMIGRANT applicant to Area Managers, Managers, Branch and Assistant Managers of CICs/CPCs. The applicant:

a) must be described in A19(2)(a), (a.1), (b) or 27(2)(d) only and in no other criminally inadmissible class;

b) has no more than two (2) convictions that may be prosecuted indictment; or

c) has committed no more than one act or omissions A19(2)(a.1)(ii); and

d) did not use violence, a weapon or cause serious property damage or injury to anyone while committing the offence(s), act or omission.

ALL cases involving immigrant applicants described in A19(1)(c) and (c.1) will continue to be referred to NHQ. Visitor cases involving an element of controversy or contentiousness will also be referred to NHQ. ALL permits issued to temporary entrants described in A19(1)(c) and (c.1) must be reported to Case Review (BCM), Case Management Branch (BCD), NHQ (see section 3.7).

3.6 National security

The **national security** provisions, subsection 9(5) and paragraphs 19(1)(f), (k) and (l) of the Act, are excluded from delegation. That is, the Minister him/herself would need to examine the allegation and either uphold it or grant relief by way of a permit. Paragraph 19(1)(e) should be viewed in much the same degree of seriousness.

For ease of reference, a brief description of the above-mentioned classes follows:

19(1)(e) reasonable grounds to believe will engage in espionage/subversion against government or will, while in Canada, engage/institute the subversions by force of any government; terrorism - are members of an organization who engage in terrorism/ subversion;

19(1)(f) have engaged in subversion/terrorism/espionage;

19(1)(k) persons who constitute a danger to the security of Canada and are not members of a class described in paragraph (e), (f), or (g);

19(1)(l) persons who are/were senior members or officials in a government that is/was engaged in terrorism, systematic or gross human rights violations or where crimes or crimes against humanity, except persons who have satisfied the Minister that their admission would be detrimental to the national interest.

Rarely would the circumstance arise when a permit would be recommended in these cases, but if it should, because of a high potential for security or public safety risks, **permits must not be issued to persons who are members of these classes without prior concurrence or direction from the Security Review, (BCZ), Case Management Branch (BCD), NHQ, for both immigrant and visitor applicants**.

On the other hand, in Instrument I-1, the Minister has delegated the authority to issue permits down to Senior Immigration Examining Officers, supervisors and selected others in cases of paragraphs 19(2)(d) and 27(2)(a) by reason of 19(2)(d), or 27(2)(b) or (e) "**.and under no other provision of the Immigration Act.**" The Minister also delegates his authority to **extend**, pursuant to subsection 37(4) of the Act, a permit issued to overcome the same violations.

Although the authority to issue permits is delegated to various individuals, you must seek concurrence from RHQ or NHQ when a favourable recommendation is made in certain situations. APPENDIX A lists the level of concurrence required in a case.

3.7 Communicating the decision and issuing permits

Negative Decisions

Clients in Canada should be informed of negative decisions in writing [see APPENDIX B for a sample letter]. Duration and limitation of existing valid visitor's status, and/or expectations concerning voluntary departure and confirmation of same, and/or notice to appear for inquiry, together with counselling regarding possible penalties in the event of a failure to comply should also be communicated to the person. Also, to assist clients in accepting the negative decision, it is advisable to inform them what steps to take in seeking relief or to overcome their inadmissibility or make themselves eligible in future.

Abroad, if a visa officer decides not to issue a Minister's permit, the negative decision must be communicated with respect to the application for permanent residence or temporary entry. This would normally be a refusal letter drafted to meet the legal requirements for refusing an application for permanent residence or temporary entry. If the visa officer considered recommending or issuing a permit, the refusal letter should also explain why it cannot be issued.

It is appropriate when dealing with individuals from Schedule II countries, not applying for any other type of document, to refer only to a Minister's permit in a refusal letter.

Enter refusals on FOSS as an NCB under "General Information" in Canada and on CAIPS overseas and follow up or monitor to ensure compliance.

Positive Decisions

In Canada and at Ports of Entry, prepare a Minister's permit by entering the data into the FOSS computer system and having it generate the document on the Full Document

Entry printer. If this is not possible, an IMM 1263 (Minister's permit) may be completed by hand and then input via the SE (Status Entry) mode. Care should be taken to ensure appropriate **validity dates** are inserted and the decision on whether or not the person shall be **allowed to leave and re-enter Canada** is indicated.

In cases abroad, the visa officer will issue a form IMM 1263 (Minister's permit).

After a permit is issued to a temporary entrant described in A19(1)(c) or (c.1) immigration and visa officers must report certain information to NHQ. The report must state the offence, the equivalent offence in Canada and the sentence. If the sentence included imprisonment, the time served must be in the report. It must also show why the permit was issued and include a copy of the document.

At POEs and inland CICs this information is usually in the A20 or A27 report. Immigration officers may submit these reports to NHQ if they contain the details of the offence, sentence and rationale for permit issuance.

Visa officers are also required to report each permit issued to temporary entrants described in A19(1)(c) or (c.1). The information in the report is the same as for POEs and inland CICs. This information is usually in the case notes. Visa officers may submit copies of these notes with a copy of the permit.

Reports must be submitted by fax within 48 hours of permit issuance. They should be addressed to Case Review (BCM). The fax number is (613) 957-7235.

Whether the permit is being issued abroad or in Canada, be sure to enter the **correct** "Type of Case" code on the document. This information is valuable not only to our staff but also to provincial ministries which are responsible for health insurance, welfare and social assistance. The "type of case" codes are:

For "early admission" or "under application" cases

89 - Member of Family Class

88 - Convention Refugee, member of Designated Class

87 - National Interest (entrepreneur, self-employed, urgent labour market need)

86 - Other, N.E.S.

Note: *"under application cases" mean immigrant cases that have been approved for processing within Canada.*

"Refused" Applicant for Permanent Residence

95 - Criminal/Security/Other Inadmissibility - Member of Family Class

94 - Criminal/Security/Other Inadmissibility - National Interest (entrepreneur, self-employed, urgent labour market need)

93 Criminal/Security/Other Inadmissibility - Other, NES

92 Medical Inadmissibility - Member of Family Class

91 Medical Inadmissibility - National Interest (entrepreneur, self-employed, urgent labour market need)

90- Medical Inadmissibility - Other, NES

Visitor cases

96 - Verification of departure required (see OP 19, section 5.5)

85 - Medical treatment

84 - Student

81 - Worker

80 - Inadmissible person, N.E.S.

Refer to FOSS, ID or IH manuals for further instructions on forms coding and completion procedures.

To ensure the client understands the nature of the permit, a letter of explanation should be issued (see APPENDIX C).

In all cases, attach a picture of the permit holder to the IMM 1263 using a wet or dry seal. Please note, separate documents are to be issued for each person requiring a Minister's permit. Family members are not all to be documented on one permit.

> ***Note:*** *As FOSS screens do not capture all the information stored on paper files, it will be necessary to indicate relevant information in the "Remarks" section of the appropriate screens. This will enable officers at the Case Processing Centre to have all information before them before making a decision concerning the extension of a permit. For example, if concurrence has been given by NHQ or RHQ to issue a Minister's permit and extensions, this information should be entered as "hidden" remarks on the initial Minister's permit. Adherence to this procedure will help to reduce the need of the CPC to contact Immigration offices for information on paper files.*

Issuance of permits when one family member is inadmissible (immigrant cases):

Where a decision is taken to allow an applicant and his/her dependants to come forward to Canada, where one or more family members are inadmissible, all family members will be issued Minister's permits. **Separate permits** for each member of the family will be issued and not one permit for the whole family. All members will remain on permits for five years before being considered for permanent residence [A38(1)]. They may be in the same or different inadmissible classes. Use the inadmissible class that best describes the person receiving the permit. Someone who needs a permit simply because a family member is inadmissible, usually falls into A19(2)(d) with A9(1).

The type of case code should be the same for all members of a family. This is true even for the codes corresponding to criminal and medical inadmissibility. Although not all family members may have failed criminal or medical screening, if one has, the type of case code for that member should appear on everyone's permit.

Visa officers should counsel clients that they will need to obtain employment and student authorizations if they wish to work or study in Canada.

Visa and immigration officers must also tell clients to obtain private health insurance if they are ineligible for provincial public health insurance.

3.8 Leaving and re-entering Canada A37(4.1) procedures

Generally, permits issued to facilitate temporary entry would **not** indicate "authorized to leave and re-enter". One exception to this would be the case where a permit is issued to persons who travel frequently to Canada.

In the case of a refused applicant for permanent residence in Canada, the Minister's permit should indicate the holder is "authorized to leave and re-enter" **unless** the issuing authority feels there is a valid reason to restrict the person to remain in Canada.

If the permit does not indicate "authorized to leave and re-enter", pursuant to A37(4.1) the permit is deemed cancelled if the holder leaves Canada.

3.9 Issuing extensions to Minister's permits

Upon issuance of a Minister's permit, it should be made clear to a permit holder that it is their responsibility to either leave Canada prior to expiry or to arrange for an extension of the permit through Immigration offices or the CPC. Requests for extensions must be submitted well in advance of the date of expiry. Nevertheless, to avoid inadvertent expiration of permits, Immigration offices should maintain an effective "Bring Forward" filing system for follow-up.

Before any extension of a Minister's permit is issued, all pertinent information should be obtained from FOSS or the office which originally recommended and authorized the initial permit and any subsequent extensions. Except in cases where the authority is within the local office jurisdiction, concurrence from the appropriate RHQ or NHQ is required (see section 3.5 above and APPENDIX A). If the original response from RHQ or NHQ included the concurrence to issue extensions, there is no need to contact those offices again unless the circumstances of the case have changed.

When a client applies for an extension, immigration officers should review need and risk factors (see sections 4., 5., 6. and 7. below). The extent of the review depends on the circumstances of the case.

Close attention should be paid to cases in which changes in need and risk factors are evident (see section 8.6 below). If these are different, it may not be appropriate to extend the permit (see section 8.3 below). Or, the period of validity should be short enough to allow for regular monitoring. If regular reviews show the balance between need and risk is tipping against the client, refusing the extension may be the best option. Examples of such cases include breakdowns in settlement arrangements.

> ***Note:*** *It is important to deal conclusively at an early stage with cases in which need and risk factors deteriorate. Especially, if there is little prospect they will improve before the client is eligible to apply for landing (see section* 8.2.1.*)*

If there is no indication need or risk factors have changed or are unstable, the review of need and risk factors can be less thorough or frequent.

All extensions are to be issued on either IMM 1264 (manual or flat form) or IMM 1442 (FDE or full document entry form via FOSS).

In the case of persons who apply for an extension, where the permit was originally issued to overcome the loss of visitor's status by reason of any of paragraphs 26(1)(a), (b) or (c), Immigration officers should review the original report and consider whether reinstatement of visitor status is now warranted. If so, the person is to be re-reported citing the original allegation(s) and re-instated.

> ***Note:*** *In Canada, clients requesting extensions to their permits will be given the kit entitled "Applying in Canada for: Extension of Visitor Status, Student Authorization, Employment Authorization and Extension of Minister's permit".*

Extensions of Minister's permits are not issued abroad.

3.9.1 Should a client receive an extension or a new permit

There is some confusion about when to issue extensions to Minister's permits. Sometimes when clients have already received permits or extensions, immigration officers are issuing new permits. This action is not always appropriate.

The following instructions apply in the different scenarios described by the headings.

Clients apply for a new document before the old one expires

If the immigration officer's weighing of risk and need is still favourable and:

- the client's inadmissibility (paragraph of section 19 or sub-section 27(2) of the *Immigration Act*) is the same as on the previous document; and

- the previous document was not automatically cancelled because the client left Canada;

the client receives an extension.

Immigration officers may issue extensions after the expiry of the previous document. Section 37 (4) of the *Immigration Act* allows extension *at any time*. Legal Services states *any time* can be after the expiry of the previous document. If clients apply in time, they should not suffer the consequences, i.e. a break in the continuity of their presence in Canada, of any processing delays out of their control (see also IP manual, chapter 12, section 8.2).

Clients are inadmissible or reportable for a new reason

- The immigration officer writes a new report (section 20 or section 27) detailing new grounds of inadmissibility.
- The immigration officer's assessment of risk and need factors is still positive, i.e. removal is not more appropriate in the circumstances.
- The immigration officer issues a **new** permit.

The new instance of overcoming the new inadmissibility must be captured in FOSS as a permit to ensure it is reported to Parliament.

Clients are returning to Canada

If, after assessing risk and need factors, immigration and visa officers decide to allow clients to come into Canada, they issue permits rather than extensions when:

- the client's previous document was not valid for leaving and re-entering the country; or
- the client's previous document was valid for leaving and re-entering the country, but the client is trying to return after the *valid to* date on the document.

The new instance of overcoming inadmissibility, even if the cause has not changed, must be captured in FOSS as a permit to ensure it is reported to Parliament.

> ***Note:*** *Immigration officers at CICs or CPC-V may have reasons to believe clients are outside Canada. If so, clients should be convoked to interviews to verify their presence in Canada. It is not appropriate to issue an extension to a client outside of Canada. This is true even if the client has an unexpired permit or extension valid for leaving and re-entering Canada.*

Visa officers cannot extend a permit abroad. If holders of permits valid to leave and re-enter Canada want to return after the expiry date, they apply for a new permit.

Clients apply for a new document after the expiry of the old one

Immigration officers may want to record, in some circumstances, a break in the continuity of the permit holder's presence in Canada.

Certain permit holders are eligible for consideration as applicants for landing by order-in -council after they remain continuously in Canada for five years [A 38(1)]. They must remain in Canada under the authority of permits and extensions valid for a continuous period of five years.

Clients who can only be landed by order-in-council may neglect to apply for an extension before the validity of their previous document expired. The inadmissibility, risk, and need factors are not different.

CIC must encourage clients to follow instructions. Clients are told to apply for extensions before their valid documents expire. There may be a cost to clients for not applying in time. This cost can be a break in the continuity of their residence. A break may affect their eligibility for consideration as applicants for landing by order-in-council.

Immigration officers may record a break in continuity by issuing a permit instead of extension. To indicate the client had a previous document, they must complete the document number field (see ID 4, section 44, item 22). The value in this field must always be one greater than the value in the same field on the client's previous document.

Before taking this action immigration officers must be satisfied it will encourage compliance with instructions. If the client's failure to comply is not apparently deliberate, there may be no useful purpose to re-starting the five year eligibility period.

Most applicants requiring landing by order-in-council will be medically inadmissible. Immigration officers should know if the break in continuity will affect the clients' eligibility for public health insurance. The provincial health insurer may require plan members to have documents valid when insurable expenses are incurred. If so, immigration officers should weigh the value of breaking the eligibility period with the cost to the client of uninsured health care.

Cases of criminal inadmissibility preventing landing that cannot be overcome except by an order-in-council are extremely rare. Most clients with past convictions will be eligible to apply for pardons or rehabilitation. If received, they are eligible to apply for landing through routine provisions of the *Immigration Act*. Other causes of inadmissibility preventing landing except by order-in-council are not envisaged by CIC policy. Consequently, breaks in continuity have no practical immigration consequences for these clients. Still, they may affect eligibility for health insurance. Immigration officers should take this possibility into consideration for these clients as well.

In all cases when immigration officers issue a permit to break continuity, they must inform the client. The purpose of their action is to encourage compliance with instructions. If clients do not know the cost of their failure to comply, the action is pointless. The covering letter issued with the permit should explain the break in continuity. If applicable to the client, it should also set out the consequences for their eligibility for consideration for landing by order-in-council.

4. DECISION CRITERIA

4.1 Introduction

The Immigration Act requires that immigrants and visitors not be members of an inadmissible class. Therefore, persons who are inadmissible for medical or criminal reasons would normally be refused abroad or refused processing from within Canada, even if they do meet other immigration requirements, **unless** the risk is minimal and the need for them to enter or remain in Canada is compelling. In these cases, before refusing the case outright, the officer should form an opinion as to whether the client merits favourable discretionary consideration and the issuance of a Minister's permit.

In order to form an opinion, the officer must assess the relative risks and needs. As the risks vary depending on the inadmissibility, guidance in **assessing risks** are found in the following section:

5.2 - for Medical Inadmissibility;
6.2 - for Criminal Inadmissibility;
7.2 - for Other Inadmissibilities.

Once the risk is determined to be minimal, the need must be assessed to determine whether the case warrants a Minister's permit.

4.2 Assessing need

A client will have to show that there is **sufficient need** involved in their being allowed to enter or remain in Canada which outweighs any **potential risks** (to Canadians or Canadian society). An inadmissible person wanting to enter or remain in Canada would have to demonstrate a higher level of need than an admissible person.

The degree of need is relative to the type of case. Officers should consider "why should this person be permitted to enter Canada?" and "what factors support making his or her presence in Canada necessary?" Is it because of family ties, job qualifications or economic contribution, or the necessity to come to Canada temporarily for an event or an activity and if so, how important is his or her presence to the event?

Officers should consider the intention of the Immigration Act and decide if the need is compelling enough to override the intention of the legislation. The intention of section A19(1)(a), for example, is to protect public health or the Canadian health care system. The need may be compelling enough in the case of a spouse of a Canadian citizen where there is a bonafide relationship, whereas the need may be less compelling for more distant relatives.

It is important to note that the following points and examples are **not** exhaustive, but are intended to illustrate the scope and spirit in which discretion to issue a permit is to be applied. It is neither possible nor even desirable to provide guidelines to answer every eventuality.

The assessment of need may involve (but is not limited to) the following issues:

a) the essential purpose motivating the trip to Canada;

b) the type/class of application and pertinent family composition, both in the home country and in Canada;

c) if medical treatment is involved, whether or not the treatment is reasonably available in Canada or elsewhere (comments on the relative costs/accessibility may be helpful); anticipated effectiveness of treatment;

d) the tangible or intangible benefits which may accrue to the person concerned and to others; and

e) the identity of sponsor (in an immigrant case) or host or employer (in a visitor case).

A case that may **not** warrant favourable consideration may be the case of an inadmissible sponsored parent who has other children or other family members remaining in the country of origin to care for him/her. Here, the availability of support in the home country would not support their need to be in Canada. Another case that may **not** warrant a permit would be a criminally inadmissible spouse where there is risk of repeat offenses or violence. Where there is more than minimal risk, the permit should not be authorized.

Regarding visitors, it has been a long-standing policy to allow inadmissible persons to come into or remain in Canada for legitimate temporary purpose, where such action would not otherwise contravene the letter or spirit of the Immigration Act. In visitor cases, both the **risk** and **need** factors should be clearly established and dealt with appropriately.

Of course, discretionary entry [A19(3)] at a port of entry and reinstatement of status [A27(2.1)] inland, should be considered by immigration officers at ports of entry and Immigration offices, where appropriate. As well, even if the inadmissibility or violation is relatively minor and/or the risks are small, a permit may be unwarranted in the absence of urgent need. For example, the integrity of the Canadian visitor visa program would be severely undermined if the lack of a CVV (Canadian Visitor Visa) could be readily overcome at our ports of entry by the automatic issuance of Minister's Permits.

Permits should not normally be considered where there are reasonable grounds to believe that:

a) the prospective sponsor, host or employer in Canada is not reputable or accountable (e.g., an ad hoc committee established solely for the purpose of sponsoring the inadmissible individual as a speaker); or

b) the person's presence in Canada may be expected to result in public disorder.

5. MEDICAL INADMISSIBILITY

(A19(1)(a); A11; R21 & 22)

5.1 Introduction

A19(1)(a) describes persons who are medically inadmissible to Canada. The provisions of A19(1)(a) were established by Parliament to protect Canadian residents from persons who are or are likely to be a danger to public health or to public safety, or their admission would cause or might be expected to cause excessive demands on health or social services. Decisions to recommend and issue Minister's permits in these cases should not be made lightly.

Exemptions

Subsection A46.04(3) of the Act exempts persons found by the IRB to be Convention refugees, including any of their dependants for whom landing is sought, from the medical inadmissibility provisions of A19(1)(a). Members of the Post-Determination Refugee Claimants in Canada (PDRCC) class and their dependants are also exempted from the medical inadmissibility provisions of A19(1)(a) by R11.4(1).

5.2 Assessing risks

Although the provisions of A19(1)(a) were established to protect Canadian residents and the health care system, there will be persons whose admission to Canada may be facilitated by the Minister's discretionary authority to issue a permit. This could arise in the context of inadmissible spouses of Canadian citizens or permanent residents, or where visitors are coming for prearranged medical treatment.

The following questions should be addressed:

a) Is the person suffering from a communicable or contagious disease **or** is there any other risk regarding their admittance? A19(1)(a)(i) cases have to be evaluated in the context of the immediate threat to the travelling public and in the community of destination. Precautions must be established in advance to ensure that persons diagnosed or suspected of being infected with a communicable disease will **NOT** pose a threat to **ANYONE** encountered en route or in Canada. If this protection is not guaranteed, the permit should **NOT** be issued.

b) Can concerned officials and the public be protected or forewarned regarding contact with a person who presents a medical risk?

c) How severe is the person's anticipated need for health or social services in relation to the demand for these services by/to Canadian residents?

d) What is the cost of the treatment or care, if available?

e) If a visitor, how will the costs be covered? (Insurance? Family finances?) If an immigrant, will provincial public health insurers provide insurance coverage? (Note: Rules governing eligibility in provincial public health insurance plans vary widely. They are also subject to change. You may ask applicants to obtain information about eligibility directly from provincial plan administrators. You may also ask the regional Director General or Director [see section (5.3) to answer this question.]

f) Are the arrangements for treatment/care and cost coverage in place? [see section (5.3)]

g) If a temporary entrant for treatment, will follow-up treatment be required in Canada or the country of origin? Is follow-up treatment available in the country of origin? If it is unavailable there, will this prevent the person from returning home?

h) If an intending immigrant, is the person likely to become productive or self-supporting?

i) If an intending immigrant, is there any risk the person will require public assistance? (Note: These permit holders can become eligible to apply to the Governor in Council for landing see A38(1) and IP 12, section 8.2.1. Neither recommendations to, or approval of applications for landing are automatic. Factors such as dependence on public assistance can be an obstacle to landing. Intending immigrants likely to rely on public assistance continuously are high risk candidates for permits.)

All of these issues and contingencies should be satisfactorily addressed as part of the evaluation of whether a permit is warranted.

Immigration officers should be guided primarily in these cases (M4 to M7) by the medical profile and "expanded narrative" contained in the MS 1014 or Medical Status report from FOSS (Field Operations Support System). Visa officers should be guided by the medical profile and "expanded narrative" on the MS 1014 and by medical information on CAIPS, if available.

Once the risk is determined to be minimal, the element of need has to be assessed. Guidelines for assessing need are included in section 4.1 above.

5.3 Summary of case and recommendation

In medically inadmissible cases, where it is determined that a permit should be recommended, the local office shall forward the summary of the case and favourable recommendation to the Director General/Director, Immigration in the region responsible for the province to which the person is destined. The report will cite reference IP 12, section 5.3 and OP 12, section 5.3 and should contain the following information:

a) the client's basic information;

b) a copy of the A20 or A27 report (if applicable);

c) risk assessment, addressing **all** issues as outlined in section 5.2;

d) needs analysis;

e) any other relevant circumstances which prompted a favourable recommendation and;

f) an indication that settlement arrangements are met;

g) supporting documentation (IMM 8, MS 1014, MS 1017, applicable telexes);

h) travel plans; and

i) in the case of a person seeking treatment in Canada evidence a health care practitioner and health care facility are prepared to offer treatment, evidence of satisfactory arrangements to pay for the treatment that do not include payments from a public health insurance plan of a Canadian province or territory, and evidence from the health care facility that the treatment will not displace or delay treatment for anyone on a waiting list for medical services.

Upon receipt of the above report and recommendation, the Director will seek an opinion from the responsible provincial health authorities, where they have indicated a desire for such involvement. The Director General/Director will ensure that all public safety, quarantine, health care access, eligibility for provincial health insurance, financial and provincial jurisdictional factors are satisfactorily addressed before concurring to or authorizing the issuance of the permit.

Where the opinion of provincial health authorities is warranted and those authorities do not deem the information on the "expanded narrative" to be sufficient for their purposes, Immigration Health Services (RNH) or Overseas Medical Services (RIH) will upon request supply a complete diagnosis directly to them. While the diagnosis will not be supplied to Immigration offices directly, RHQs may request that RNH or RIH send a diagnosis to the provincial health authorities if the case appears to warrant facilitation.

(**Note:** Due to varying provincial requirements, it is left to each RHQ to devise the liaison procedures with their provincial counterparts.)

In cases where provincial's opinion respecting the issuance of a Minister's permit has been requested and the provincial authorities do not favour the issuance of the Minister's permit, such position should be given due consideration by the Director of Immigration when weighing the various factors that need be taken into account in making a final decision on issuance of a Minister's permit. In immigrant cases abroad, such weighing could likely bring the Program Manager to refuse the issuance of a ministerial permit. Where issuance of the permit was considered because an application for an immigrant visa by a member of the family class could not be approved, the sponsor should be informed of his/her right of appeal against the refusal of that application. For in-Canada applications, such weighing could likely lead to a refusal of visa exemption. A letter should be sent to the client advising of the refusal according to instructions in section 5.3 above.

The Director will convey his decision to the requesting office, with copies to any other Immigration offices or visa offices involved, and to RNH or RIH.

6. CRIMINAL INADMISSIBILITY

[A19(1)(c), (c.1)(i) & (ii), (c.2), (d), (g), (j); A19(2)(a), (a.1)(i) & (ii), (b); A27(2)(d)] (to be read in conjunction with IS 9, PE 9 and PE 10, IP/OP 11)

6.1 Introduction

Parliament has given officers enhanced powers to exclude or remove criminal elements from Canada. The government is committed to protecting Canadians from persons who are likely to engage in criminal activity; therefore **decisions** to allow criminally inadmissible persons to come into Canada **should not be made lightly**.

6.2 Assessing risks

Acceptable risk would mean the likelihood of further criminal activity is assessed to be improbable. The onus is upon the client to demonstrate that he/she has successfully overcome any past difficulties which brought him/her into conflict with the laws of society.

The following risk-related concerns need to be assessed:

a) the seriousness of the offence;

b) the chances of successful settlement without committing further offenses;

c) behavioural factors involved (drugs, alcohol);

d) pattern of criminal behaviour, evidence that the person has reformed or rehabilitated;

e) pattern of criminal behaviour - was the offence a single event in an otherwise unblemished record (out of character);

f) completion of all sentences, fines paid or restitution made;

g) outstanding criminal charges;

h) restriction of travel following probation or parole;

i) eligibility for rehabilitation or a pardon;

j) time elapsed since the offence occurred - is it a shoplifting offence that occurred last week or one that occurred 20 years ago;

k) controversy or risk caused by presence of the person in Canada;

l) if an immigrant, will provincial public health insurers provide insurance coverage? (Note: Rules governing eligibility in provincial public health insurance plans vary widely. They are also subject to change. Applicants should obtain information about eligibility directly from provincial plan administrators. If ineligible, they should also provide proof they will not become indigent if they require health care or hospitalization in Canada, e.g., sufficient assets or private insurance to cover possible costs.);

m) if an intending immigrant, is there any risk the person will require public assistance? (Note: These permit holders can become eligible to apply to the Governor in Council for landing see A38(1) and IP 12, section 8.2.1. Neither recommendations to, or approval of applications for landing are automatic. Factors such as dependence on public assistance can be an obstacle to landing. Intending immigrants likely to rely on public assistance continuously are high risk candidates for permits.)

All of these issues and contingencies should be satisfactorily addressed, including where necessary, obtaining information or confirmation from third parties.

6.3 Summary of case and recommendation (Applicants for permanent residence)

In the case of applicants for permanent residence, a summary of the case and recommendation that will be sent to Case Management (NCD) citing reference to IP 12, section 6.5 and OP 12, section 6.5 and should contain the following information:

a) the client's basic information (name, DOB, POB, etc.);

b) a copy of the A20/A27 report (if applicable);

c) immigrant category, marital status, any dependants or other relatives (and their status in Canada); an analysis as outlined in section 4.1 above, including any public policy, national interest, or compassionate and humanitarian considerations; and brief comments on the applicant's chances of successful settlement in Canada, (education, work skills, employment history, family support);

d) basis of prohibition:

- Inadmissible class (A19(1)(c), A19(2)(a) etc.);
- Name of offense;
- Date of conviction (Crimes committed);
- Details of sentence;
- Canadian equivalency by name, statute and section;
- Maximum penalty in Canada;
- Date eligible for rehabilitation.

e) Circumstances - This section of the report must provide full background information leading up to the commission of the offence and an overview of the subject's lifestyle at the time, which include:

- Date of occurrence of offence;
- Place of occurrence of offence;
- Factors leading up to the event (motives);
- Details of the offence;
- Part played by the applicant in the commission of the offence;
- Degree of violence including use of weapons;
- Involvement of drugs or alcohol (including any long term problems involving drugs or alcohol);
- Was this part of a pattern of criminal activity?
- Was the applicant involved in a "criminal lifestyle"? (Did he/she earn his/her living from crime?) Were his/her friends also largely involved in criminal activities? Does the client have several convictions for petty offenses? Was the client involved in an unstable life situation, unstable employment, weak family links, frequent change of residence?

f) Rehabilitation considerations - The concept of rehabilitation involves those things the applicant has done to ensure that they have distanced themselves from their criminal past and will not offend again. Factors to be considered might include:

- acceptance of responsibility for the offence;
- evidence of remorse for any harm done;
- understanding of gravity of the offence, of the damage they have done to themselves and to others;
- evidence of restitution, where possible, to victims of their crimes;
- persons whose involvement in crime included or was the result of drug or alcohol abuse, sexual abuse, psychological disturbance or a history of assaults often require counselling or therapy in order to achieve rehabilitation -

evidence of attendance and/or successful completion of any program should be included in the report;

- applicants who have been involved in a long term criminal lifestyle often exhibit instability in their lives as a whole - evidence of rehabilitation will include such features as stability in employment and family life, participation in educational and skill training programs and community life are often indicative of the change in lifestyle required.

g) an assessment of the degree of risk (including the factors in section 6.2 above;

h) whether the client has applied for a pardon (if applicable);

i) recommendation;

j) security decision (required in all criminality cases regardless of age).

The summary of the case and recommendation should be forwarded to the delegated authority and concurrence should be sought as outlined in section 6.2 above and APPENDIX A.

6.4 Supporting documentation: Applicant for permanent residence

The following documents should accompany the report and recommendation.

Mandatory

- IMM 0008 or IMM 5001 "Application for permanent residence", if applicable
- security check (required in all criminality cases regardless of age)
- Conviction certificate
- subject's personal written statement fully outlining and detailing circumstances of the offence
- translated copy of foreign statute (mandatory when seeking advice on equivalence), and
- a criminal clearance certificate obtained from the police authorities in the areas where he/she has resided for the past ten years (for in-Canada -RCMP criminal clearance certificate; U.S. - FBI and state criminal clearance certificates)

Optional

- rehabilitation letters (character reference)
- court records and transcript
- probation or parole officer's reports
- pardons which do not vacate convictions retroactively
- file notes, and
- any other documentation the officer deems appropriate to facilitate the decision.

6.5 Summary of case and recommendations, and reporting permits to NHQ (Applicants for temporary entry)

Where there is no requirement for concurrence from NHQ, it may not be necessary in all cases to include all the above information in the summary of the case.

Although concurrence is not required for temporary entry applications, permit issuance must still be reported to NHQ (see section 3.7).

6.6 A19(3) entry

Where a case involves a minor offence and no controversy is anticipated, officers at ports of entry may grant admission under A19(3) for a period not exceeding 30 days.

Frequent travellers, or persons who are likely to return to Canada at some future date, and who are eligible for rehabilitation but have not applied, may be provided with an application kit entitled "Application for Criminal Rehabilitation" and encouraged to apply.

6.7 Long-term permits for frequent visitors

Where a person is not eligible to obtain relief from the Minister or has not received a pardon but other circumstances support or warrant facilitation, a permit may be issued by the delegated authority. An example might be the case of a frequent business traveller who was convicted of a minor criminal offence that renders the person inadmissible under A19(2)(a.1). It may be less time consuming and expensive for all concerned to issue a permit in these cases than to repeatedly grant A19(3) entry.

The criteria to determine if a criminal offence is "minor" are:

- crimes which did not involve drugs, except for simple possession of marijuana/ hashish;
- crimes not involving physical harm or violence;
- crimes resulting in suspended sentences or probation (no jail term), unless it was the result of plea bargaining;
- crimes which did not involve damage to property (impaired driving resulting in an accident would not be eligible);
- if on probation, the person has been fulfilling the conditions;
- there are no more than two (2) convictions.

Note: *The applicant would have to meet each one of the criteria listed.*

7. OTHER INADMISSIBILITY OR VIOLATION

(assorted sections of the Act and Regulations)

7.1 Introduction

Here, whichever of the wide range of other reasons for inadmissibility or violations are encountered, we should weigh the possible merits of each case in relation to the gravity of the reason for inadmissibility or violation.

7.2 Assessing risks

Once it is established that a person is inadmissible on other than medical or criminal grounds, the following risk related concerns should be addressed:

a) Is there a pattern of previous or multiple violations of the Act/Regulations?

b) Is the violation inadvertent and accidental, or is it the result of careless or flagrant disregard for the law?

c) Is the person credible?

d) In the case of previously deported persons, have the original grounds for deportation been overcome or diminished? (Are there any statutory bars remaining against the person, other than the deportation order?)

e) Are there public controversy elements to the case which would warrant referral to NHQ?

f) If an intending immigrant, is there any risk the person will require public assistance? (Note: These permit holders can become eligible to apply to the Governor in Council for landing see A38(1) and IP 12, section 8.2.1. Neither recommendations to, or approval of applications for landing are automatic. Factors such as dependence on public assistance can be an obstacle to landing. Intending immigrants likely to rely on public assistance continuously are high risk candidates for permits.)

All of these issues and contingencies should be satisfactorily addressed. Where it is necessary to obtain information or confirmation from third parties, documentary evidence should be kept on file.

7.3 Early admission - Special cases

The **early admission of any immigrant**, prior to completion of processing, may be facilitated by way of a permit provided the delegated authority ensures that this action is essential and that there is no reason to believe the person concerned would not be able to meet all the applicable requirements if the immigration visa examination were completed in the normal manner.

7.4 National interest cases

The urgent need for the applicant's presence in Canada should normally relate to economic or employment security of Canadian citizens or permanent residents. Such need may be confirmed by appropriate officials of the national employment service or provincial government. The bonafides of the individual as well as the employer or business proposal and the urgency of the case should be well established before a permit is issued.

7.5 Summary of case and recommendation

The summary of the case and recommendation should be forwarded to the delegated authority and concurrence should be sought as outlined in section 3.6 above. Where applicable, copies should be sent to the Immigration office nearest the person's destination in Canada or the visa office abroad where the person was dealt with before coming to Canada. The report will cite IP 12, section 7.5 and should contain the following information:

a) a copy of the A20 or A27(2) report, if applicable;

b) risk assessment, in which such issues as are covered in section 7.2 above are addressed;

c) needs analysis per section 4.1 above; and

d) recommendation.

8. OTHER PROCEDURES

8.1 Convention refugees in Canada

A4(2.1) gives a refugee, while lawfully in Canada (visitor, permanent resident, Minister's permit holder) the right to remain in Canada except where the person is described in A19(1)(c.1), (c.2), (d), (e), (f), (g), (j), (k) or (l), therefore Minister's permits will not be routinely issued to Convention refugees.

If a Convention refugee seeking permanent residence is determined to be

> *"a person described in A.19(1)(c.1), (c.2), (d), (e), (f), (g), (j), (k), or (l) or a person who has been convicted of an offence under any Act of Parliament for which a term of imprisonment of*
>
> a) more than six months has been imposed; or
>
> b) five years or more may be imposed." [A.4.(2.1)]

the person cannot be granted landing [46.04(3)]. There may be reasons, nonetheless, to allow the person to remain in Canada under the authority of a Minister's Permit. In such cases the senior immigration officer will submit full particulars of the case, together with a recommendation, to the Director, Case Review (BCM), Case Management Branch, NHQ. If applicable, posts overseas must be advised to cease processing of overseas dependants.

8.2 Expiry of permits and A38(1) landing

A38(1) provides that the Governor in Council may authorize the landing of any person who has resided continuously in Canada for at least five years under the authority of a Minister's permit. The question arises: What can be done if a permit is allowed inadvertently to lapse in such a case? Legal Services confirms that there can be a limited degree of flexibility in interpreting this provision. Therefore, a **short break** in the validity of a permit should not necessarily be interpreted as a break in time. The immigration officer's decision on this issue must be based on reasonable grounds. For example, it is reasonable to consider the period of time unbroken where the failure to extend the permit was due to departmental oversight, or because unavoidable circumstances beyond the person's control prevented the holder from seeking an extension on time. Nonetheless, the person may be expected to report to an immigration officer without delay at the earliest opportunity.

On the other hand, where the holder of an expired permit is not deemed to merit another permit or deserve further favourable consideration, a letter requiring the person to confirm departure from Canada and indicating possible consequences of non-compliance should be sent to the person. (See APPENDIX D.) The letter need not specifically extend an opportunity to make representations; however, if representations are received, they should be considered and addressed in a written reply. If the person does not leave voluntarily, then further action as outlined in section 8.4 below should ensue.

8.2.1 A38(1) landing

Landing by operation of A38(1) is not automatic. Immigration officers review cases at the end of the five-year period. Their review focuses on need and risk factors (see sections 4., 5., 6. and 7.). Any unfavourable change in the balance of these factors (i.e. need has decreased and risk has grown) may be reason to not process the case for landing.

> ***Note:*** *Immigration officers should discover most such cases before the end of the five year period (see section* 3.9*).*

If the review is favourable, the immigration officer writes a memorandum recommending landing. The memorandum must clearly identify the client(s) and guarantor(s) by name and FOSS client identification numbers.

The memorandum includes a brief summary of the case. It should explain why the permit was first issued. It should also include an up-to-date assessment of the need and risk factors. Among the latter, evidence that permit holders do not rely on public assistance is helpful.

A CIC manager must sign the recommendation. The manager sends it to the Director, Case Review (BCM), Case Management Branch (BCD), NHQ.

IMM 5001s will accompany all recommendations. BCM also requires copies of initial permits and all extensions. Other attachments that fully explain all causes of inadmissibility are often necessary.

If the client is medically inadmissible, a copy of the medical notification (IMM 5365) is also part of the submission to BCM.

Some clients may be criminally inadmissible. Normally they apply for a pardon or rehabilitation (see IP 11 or OP 18) to overcome this bar to landing. If they will never be eligible for a pardon or rehabilitation, they may apply for A38(1) landing. Permanent ineligibility occurs when the time period required between the end of a sentence and the application for the pardon or rehabilitation never elapses. Examples can include people convicted in absentia. Often they do not serve their sentences. Clients sentenced to life imprisonment may also be in this situation. Unless the terms of their release from prison altered their sentence, only the Governor in Council can authorize their landing. Although a recommendation for A38(1) landing is not a rehabilitation application, in these cases it should be accompanied by the information outlined at IP 11, section 7.2 or OP 18, section 6.6. As well, it should explain why a pardon or rehabilitation is impossible.

Applicants for A38(1) landing must pay the ROLF and the order-in-council fee.

8.3 Cancellation of a Minister's permit

Where removal of a permit holder is contemplated, because of changes in the permit holder's circumstances, a letter indicating that it is our intention to cancel the permit and stating the reasons for this decision shall be issued in all cases. The letter should be either hand delivered to the person or sent in a manner which afford's the Immigration office with acknowledgement of service (e.g., "double-registered" letter). Legal counsel, if retained, should also receive copies of such correspondence. In keeping with the procedural fairness, the letter must also advise the person that he may make written representations or discuss the decision in person with an official of the department, should he wish to do so, within a reasonable period of time which should be specified. It is not intended that this be misconstrued as a formal hearing. It simply ensures that the client is afforded an opportunity to present any additional information relevant to the case.

If no representations are received or if, having received such submissions, it is determined that the original decision should stand, another letter informing the person that the permit has been cancelled will be issued. The letter will include the **effective date of permit cancellation** and will in most cases **require the person to leave Canada by a specified date** or face the possible consequence of non-compliance: namely, inquiry action in all instances where removal via the inquiry process is possible; in other cases, where the person is not reportable under A27(2) a formal direction to leave pursuant to A37(5) will be issued upon cancellation of the permit. (See section 8.4b) below.)

If a person whose permit has expired or been cancelled does not leave Canada by the date specified, he must be reported under the appropriate paragraph of A27(2), where this is legally possible. Where inquiry action can be taken, these procedures should be

utilized. Where a person who has been directed to leave pursuant to A37(5) fails to do so by the date specified, but is not legally reportable, a memorandum recommending that a deportation order be made pursuant to A37(6) should be forwarded to the Director General, Case Management Branch, NHQ.

If a visa officer encounters an expired or cancelled permit and the holder refuses to voluntarily surrender it, the document may be marked with a "Cancelled" stamp and the office date stamp.

Notifying issuing authority

When an immigration officer becomes aware of any changes in the circumstances of a permit holder from those under which the permit was granted, no final decision/action should be taken until the original issuing authority has been consulted and, where legally necessary, given concurrence to proceed with the action proposed.

Holder's whereabouts unknown

If the holder's whereabouts are unknown, a thorough investigation is to be conducted in an effort to locate the person to initiate removal action. Where the person cannot be found, a senior immigration officer may, following the submission of a report under A27(2), issue a warrant for the arrest of that person and have the particulars entered onto CPIC. If the person to be removed is not reportable under A27(2), a memorandum requesting that a deportation order be made pursuant to A37(5) or (6) should be forwarded to the Director General, Case Management Branch, NHQ.

It is important that a diligent attempt be made to determine whether the person is still in Canada before taking the action outlined above. This will ensure that the department will not be exposed to charges of false arrest should a warrant be executed against a person who has left Canada and re-entered with valid authorization.

Cancellation deemed per A37(4.1)

Pursuant to A37(4.1), "Unless a permit specifies that a person may leave and re-enter Canada, the permit is cancelled if the person to whom the permit was issued leaves Canada." Holders of permits cancelled under these provisions who approach visa offices or ports of entry should be dealt with according to their admissibility and circumstances prevailing at the time they are applying for re-entry. It appears to be only sound operational practice to communicate and exchange information with the other office(s) which may have dealt with such a client in the past, prior to making a final determination or decision.

If a permit that is not specified as valid to re-enter Canada is submitted to a visa officer for any purpose, it may be marked with a "Cancelled" stamp and the office date stamp if necessary.

8.4 Removals

a) **Removal via Inquiry process**

(i) **New grounds.** If, since the issuance of the permit, the holder becomes a person described in any paragraph of A27(2) other than the one(s) on which the permit was originally based, the permit will be cancelled pursuant to A37(4) and the person will be reported as applicable and notified as in section 8.3 above.

(ii) **Original grounds.** Where no new grounds have arisen since the permit was issued, the original grounds on which the permit was issued may be utilized. In some instances the original grounds of inadmissibility can be cited via A27(2)(a) by reason of A19 as applicable. Where the original grounds were A19(1)(h) or (i), or A19(2)(c), this course cannot be followed. In the absence of other grounds such persons should be directed to leave pursuant to A37(5)

and can only be removed via Ministerial orders under A37(5) or (6). (See paragraph b) below.)

(iii) Where a violation under A27(2)(e) is utilized and can be supported, our position at inquiry must be that the permit was only issued to **temporarily** preclude or suspend removal action for reasons of public policy or humanitarian or compassionate grounds. Our position is that the person was and continues to be in contravention of the Act for having remained in Canada after having ceased to be a visitor. The issuance of the permit simply overcame, for the duration of its validity, the violation, in the same way that a permit might overcome a medical or criminal inadmissibility without affecting the person's status with reference to rehabilitation or pardon procedures. [Reference: **Arturo Heras v. M.E.I.**, Federal Court Trial Division. In this case, the presiding Judge reasoned that, notwithstanding the issue of a permit, the appellant had ceased to be a visitor when he overstayed the period for which he had been granted entry and hence when his permit expired he could be reported under A27(2)(e).]

b) **Removal via Ministerial deportation order**

It is expected that in the vast majority of cases removal should be pursued and can be accomplished via inquiry procedures. It is anticipated that Ministerial deportation orders will be utilized only where there are no other grounds and where an individual poses a serious threat to public safety or national security, and/or where the national interest would not be served by the inquiry process. The Minister's authorities under A37(5) and (6) have been delegated to only three other people. In all cases, recommendations for Ministerial deportation will be addressed to the Director General, Case Management Branch, NHQ.

Action by NHQ, RHQ and Immigration office

In cases described in section 8.4 b) above the Director General will review the case and in turn make a recommendation to the Assistant Deputy Minister, National Service Sector (i.e., a delegated authority) regarding the making of a Ministerial deportation order pursuant to A37(5) or (6) as applicable. The Immigration office (and regional headquarters) will be informed of the decision as soon as possible, and will be responsible for ensuring that the person's physical removal is effected in accordance with any direction or order made under these subsections.

8.5 Lost/stolen permits; replacements

When an Immigration office receives information concerning a lost or stolen Minister's permit, details should be entered onto the FOSS system through the SE (Status Entry) module, using an NCB (Non-Computer Based form) "Watch For" (Code-01) with an expiry date at least equivalent to the validity of the lost/stolen document.

Immigration offices can issue replacement permits through FOSS. Officers issuing such replacement permits should verify the information by contacting the office which issued the original document. (See also ID manual, "General Guidelines and Procedures", page 8 for further information.)

When a visa officer has information about a lost or stolen permit, the procedures outlined at IC 3, section 9.2 should be consulted.

8.6 Adjustment assistance

Whenever a Settlement Officer encounters a permit holder in need of financial help, he/she may consult with the responsible Immigration Officer to determine the immigration category and the circumstances of the person's admittance and status in Canada. This will allow the Settlement Officer to determine if financial assistance may be provided under the Adjustment Assistance Program (AAP) and also will alert the Immigration office to the holder's current circumstances, in the event that further investigation or action is warranted.

APPENDIX A

ISSUING AND EXTENDING MINISTER'S PERMIT

Level of Concurrence Required

NHQ

- Criminality [A19(1)(c)(c.1),(c.2)] where the person is a prospective immigrant (including those persons who have visitor status and whose application is being processed in Canada or outside of Canada).

  All recommendations in criminal cases should be addressed to the Director, Case Review (BCM), Case Management Branch, NHQ.

- War crimes and crimes against humanity [A19(1)(j)]
- Any recommendation about someone falling into this class of inadmissibility must be scrutinized by Case Management Branch (BCD). Address your recommendation to Security Review (BCZ) in BCD and copy the geographic desk in the International Region (RID).
- Security and Public Safety [A19(1)(d), (e), (f), (g), (k), (l)]
- All recommendations in security or public safety cases should be addressed to the Security Review, (BCZ), Case Management Branch (BCD), NHQ. Concurrence may be sought from NHQ without reference to RHQ where the recommendation originates in Canada. When the recommendation originates outside of Canada, visa posts will seek concurrence from NHQ and copy the information to Regional authorities/CIC's in provinces where the inadmissible person is destined.

RHQ

- Medical Inadmissibility [A19(1)(a)]

LOCAL LEVEL (CIC or Visa office)

- Criminal Inadmissibility - Visitors
- Criminal Inadmissibility [A19(2)(a), (a.1) or (b)] - Immigrants. N.B. Consult guidelines in section 3.3.
- All other cases

APPENDIX B
DRAFT LETTER TO CLIENT COVERING REFUSAL TO ISSUE MINISTER'S PERMIT

(see IP 12, section 3.6 and OP 12, section 3.6)

This refers to your application/interview of _____ *(day/month/year)* concerning _____(nature of application and/or reason for interview).

Your case has been examined with reference to the possibility of (issuing to you/extending your) Minister's permit. After a careful and sympathetic review it has been determined that there are insufficient grounds to merit the issuance/extension of a permit in your case.

Our records indicate that you have authorization to remain in Canada (until _____[day/month/year]. (This should be sufficient time to enable you to arrange, effect and confirm your departure.) Should you voluntarily depart Canada by (said date) no further action will be taken against you.

[In cases where the person is reportable A19 or in violation A27(2)]: In order to verify your departure, please ensure that the enclosed "Check Out Letter" [see APPENDIX D] is submitted at the port of exit.

[In overseas cases]: As you are a person who has been found to be inadmissible to Canada, you should not visit Canada for any reasons without first contacting a Canadian visa officer. Should you wish to return to Canada in future, it is suggested that you attend to the following: _____. [identify action so that client can overcome inadmissibility or avoid violation of the Act/Regulations in future]

> ***Note:*** *This is a sample letter with suggested wording. Preference as to the final wording, or the use of pre-printed as opposed to micro-produced "originals" is left to the discretion of local managers provided the content remains consistent with the intent.*

APPENDIX C

SAMPLE LETTER TO CLIENT COVERING ISSUANCE OF MINISTER'S PERMIT

(see IP 12, section 3.7 and OP 19, section 5.2)

This refers to your application/interview of _____ (date/month/year) regarding _____ (nature of application and/or reason for interview).

In light of circumstances in your case, we are issuing you a Minister's permit (enclosed) to enable you to (proceed to, enter) and remain in Canada for the duration indicated on the document.

Please sign your name in the "Signature of Holder" area on the document. You should note that the permit (does/does not) allow you to leave and re-enter Canada and is valid ONLY until _____ (date/month/year).

Should it be necessary to extend the validity of your permit, you MUST ensure that your application for such extension reaches an Immigration office or Case Processing Centre (if in Canada) or a Visa office (if abroad) at least thirty (30) days before the expiry date on the document in order to enable us to process your application in a timely manner. If you are seeking your extension from within Canada, you should call the Immigration number listed in the blue pages of your telephone book and ask for the immigration kit entitled "Applying in Canada for: Extension of Visitor Status, Student Authorization, Employment Authorization and Extension of Minister's Permit". This is kit IMM 5217.

The Minister's permit has been issued under Section 37 of the Immigration Act. The following are subsections of the act that you should be aware of:

(1) The Minister may issue a written permit authorizing any person to come into or remain in Canada if that person is:

(a) in the case of a person seeking to come into Canada, a member of an inadmissible class; or

(b) in the case of a person in Canada, a person with respect to whom a report has been or may be made under subsection 27(2).

(4) The Minister may at any time, in writing, extend or cancel a permit.

(4.1) Unless a permit specifies that a person may leave and re-enter Canada, the permit is cancelled if the person to whom the permit was issued leaves Canada.

(5) The Minister may, on the cancellation or expiration of a permit, make a deportation order against the person to whom the permit was issued or direct that person to leave Canada within a specified period.

(6) Where a person who has been directed by the Minister to leave Canada within a specified period of time fails to do so, the Minister may make a deportation order against that person.

If you have any questions regarding the above terms, please contact your local Immigration office.

Note: *This is a sample with suggested wording. Preference as to final wording, or the use of pre-printed as opposed to micro-produced "originals" is left to the discretion of local managers provided the content remains consistent with the intent.*

APPENDIX D
SAMPLE LETTER TO CLIENT WHERE CONFIRMATION OF DEPARTURE IS DESIRED

(see IP 12, section 8.2 and OP 19, section 7.2)

Dear

In my opinion you are in violation of the Immigration Act. Therefore, I am required by law to submit forthwith a report to the Deputy Minister of Citizenship and Immigration or his delegated representative. This action could result in your arrest, an Immigration Inquiry, and your deportation from Canada.

If you depart Canada prior to the convocation of an Immigration Inquiry, it will be in your best interest to confirm departure by giving this letter to the Immigration authorities at the port of departure who will inform me that you have departed Canada.

Yours truly,

_____

Immigration officer
Immigration office

_____

This is to certify that the above-named has been identified and departed from Canada this date:

_____ _____

Day/Month/Year *Signature*

_____ _____

Port *Title*

_____ _____

Signature of Bearer on Issue *Signature of Bearer on Departure*